THE MONEY-LENDERS ACT, 1900.

BY

HAYTHORNE REED, M.A.

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MONEY-LENDERS AT WORK.

Some strong remarks were made by Judge Smyly in a case at Shoreditch County Court where a man had been summoned for a debt of threepence due to a money-lender, the court costs amounting to 1s. 6d. Judge Smyly, in refusing to help the money-lender, said if this sort of thing were allowed, these courts would become the laughing-stock of the world. In another case a man was sued for 6l. and 1s. 6d. costs, and again the money-lender was non-suited. At Grimsby County Court a fisherman was sued for £3, for which he had agreed to pay £2 interest for three weeks, or 1,000 per cent. The interest was reduced to 5 per cent.

A COMMENTARY

ON THE LAW RELATING TO

MONEY-LENDERS

AND THE

MONEY-LENDERS ACT, 1900.

FULLY ANNOTATED BY SECTIONS.

BY

HAYTHORNE REED, M.A.,

OF THE INNER TEMPLE, BARRISTER-AT-LAW.

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PREFACE.

The object of the following pages is, if possible, to afford assistance to Practitioners and others in interpreting what is admittedly not an easy Statute, and one which more intimately affects large sections of the public than the majority of Statutes that are passed.

The regulations that have been made under Section 3 by the Commissioners of Inland Revenue with the approval of the Treasury as to Registration of Money-lenders will be found in the Appendix.

In the Index of Cases will be found a reference to contemporaneous reports.

HAYTHORNE REED.

7, Fig Tree Court,
The Temple,
October, 1900.

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INTRODUCTION.

THE business of a money-lender has always been so associated with rapacity and hardship that it has nowhere, nor at any time, been a popular one. We, indeed, now know from political economy that interest is the equivalent for two things: a charge for the use of the money lent, and also a charge for the risk of losing it; and this seems so obvious, that it is hard for us to realize the feelings of most ancient nations upon the subject.

The view of Greek and Roman moralists.

Aristotle denounced altogether the lending of money at interest to anyone, arguing that because money is barren and cannot breed money, therefore the lending of money at interest was most unnatural and the worst source of wealth [a]; and Cicero mentions that Cato, being asked what he thought of usury, [b] made no other answer to the question than by asking the person who spoke to him what he thought of murder.

Mahometans are not allowed by the Koran to lend money at interest [c]; and in most, if not all

(*a*) Pol. i., ch. x.

(*b*) In early days usury meant the lending of money at interest.

(*c*) Koran ii. 275: "Those who devour usury shall not "rise again, save as he ariseth whom Satan hath paralysed "with a touch."

primitive societies, where there was often community of interests, and where the relation of clanship was strong, it was thought wrong or mean to charge any interest for money lent to a relative or clansman. Thus, in ancient Rome a Roman citizen might not lend at interest to another Roman citizen; in the middle ages a Christian might not lend at interest to another Christian, and now by his law a Jew may not lend at interest to another Jew.[a]

With the decay of the primitive community, however, when men met more and more as strangers, and not as members of the same community, this could not last, and at an early date the lending of money at interest, though regulated, was allowed.

Thus Solon in 594 B.C. by drastic measures regulated usury in Athens and interest was limited in Rome by the XII. Tables (about 500 B.C.) to 12 per cent. per annum.

The view of England in the early middle ages.

Coming to later times and to England usury was absolutely forbidden by a law of Edward the Confessor, and this was the rule of the common law; the Roman Catholic Church also treated the taking of interest as a sin, and for it would correct the sinner for his soul's health.

(*a*) Deut. XXIII., 19, 20.—"Thou shalt not lend upon "usury to thy brother. . . . . Unto a stranger thou "mayest lend upon usury, but unto thy brother thou shall "not lend upon usury that the Lord thy God may bless "thee."

In the early middle ages, however, the Jews were allowed to and did openly carry on the business of money-lending. This was because the Jews were considered in the same relation to the King as the villein was to his lord; and as the king reaped considerable advantages from this position, he looked after their interests and granted them special privileges; one of these privileges, and the chief one, was the lucrative right of lending money at interest.[a] However, in the year 1290 the Jews in a body were expelled from England. Money-lending then was carried on by the Lombards, Christians at first only lending money under some cloak or device, but before long taking interest openly in spite of canonical opposition.

The right of being able to borrow and to lend money at interest became in time so obviously to the public convenience that it was at last reluctantly[b] recognised as a necessity and allowed, the rates of interest alone being regulated. Thus by 37 Hen. VIII., c. 9, legal interest was fixed at 10 per cent. per annum, and by 21 Jac. I, c. 17, was reduced to 8 per cent., by 12 Car. II. c. 13, to 6 per cent., and by 12 Anne, stat. 2, c. 16, to 5 per cent. The usury laws.

(*a*) *See* Pollock & Maitland's History of English Law, vol. I, p. 451, and on the Jews' Exchequer Court, where the Jews sued, and could be sued.

(*b*) Some statutes, that fixed the maximum amount of interest allowed, declared in their preamble that all usury was unlawful.

However, in the latter half of the 18th century, political economy was more studied and understood, and in 1787 Bentham wrote his "Defence of Usury,"[a] and showed that not only were laws against usury for the most part inoperative, being evaded by devices and legal fictions, but that where they were operative, by putting an artificial price on money, they were positively harmful and checked trade and discouraged industry.

Bentham's view.

But, though the opinion gained ground that money should be borrowed and repaid upon whatever terms the parties should agree to, and a select Committee of the House of Commons appointed in 1818 to consider the effects of the usury laws recommended their abolition, it was not until 1854 that the usury laws were repealed by 17 and 18 Vict. c. 90, and that money-lenders were allowed to charge any rate of interest.

Repeal of the usury laws.

This same principle was adopted on the Continent about the same time. As early as 1787 Austria allowed parties to fix their own rates of interest, and as late as 1879 Russia did the same. Between these dates practically all Europe, with the exception of France, adopted this principle of freedom of contract, so far, at least, as by abolishing a maximum rate of interest. In England, of course there was still the concurrent relief given by Courts of Equity against harsh and unconscionable bargains.

(*a*) Jeremy Bentham's works, vol. 3, p. 3.

yet, as will be seen later, equity did not give relief merely on account of the harshness of the contract, when the borrower was of ripe age and acted freely with his eyes open [a]; and consequently since the repeal of the usury laws a borrower has not been able to get relief merely on account of excessive interest.

Though among money-lenders there are many given to fair dealings, yet, on the other hand there are many others given to the most rapacious tyranny known to mankind, [b] and this they are enabled to practise by the ordinary circumstances which surround a money-lender and his client, namely, possession of money on the one hand, and the urgent want of it (often coupled with the necessity of secrecy) on the other.

As therefore may be imagined, this freedom of contract given to money-lenders has often been abused, and it was soon found desirable to curtail

(*a*) In Bennet *v.* Bennet, 43 L.T.N.S. at P. 246*a*, a man in good circumstances, and who could have borrowed money from his solicitor at a low rate of interest, borrowed money from a money-lender at a very high rate, and his executors attempted to set aside the contract. Jessel, M. R., gave judgment for the defendant, and said "There is nothing to "prevent people from borrowing money at 100 per cent. as "there is no law to prevent people from being fools or from "gambling," and if a money-lender is allowed to get 100 per cent. on a good security, *a fortiori*, he must be allowed to get it on a bad security.

(*b*) *See* Gordon *v.* Street (1899), 2 Q.B. 641 as an example.

Tendency of the present day legislation.

it. Thus we find that in most countries there has been a counter movement,[a] and any transaction in which one party was at a disadvantage to the other for some such reason as his necessitous condition, careless improvidence or inexperience, whereby the other obtained an excessive profit, has been treated as usurious and suppressed, and the usurer has often been treated as a criminal.[b]

This counter movement has been especially marked in Germany where the prevalent view is well expressed in the words of Jhering (Zweck im Rechte, i. 138) "Unfettered freedom in commerce "is a license to extortion, a pass for robbers and "pirates to the purses of all who fall into their "hands. Alas, for the victim! One can understand "that the wolves cry out for freedom. If the sheep "join in their cry they only prove that—— they "are sheep."

In England it was the same, and the freedom given by the Act of 1854 was soon curtailed by divers Acts.

By the Bills of Sale Acts, and by the Pawnbrokers' Acts, restrictions have been placed on lending money on personalty; and by the Bankruptcy

(*a*) In some countries this happened very quickly. In Germany, after having allowed money-lenders to make their own terms for 13 years, from 1867–1880, and in Russia for 14 years, from 1879–1893, it was found necessary to again pass laws against usury.

(*b*) See the Journal of the Society of Comparative Legislation, New Series, No. 2, p. 215.

Act of 1890, 53 & 54 Vict. c. 71, sec. 23, interest above 5 per cent. has been postponed until all the other debts proved have been paid in full; and by the Betting and Loans' (Infants) Act, 1892, 55 & 56 Vict. c. 4, sec. 2, it is made a misdemeanour to send circulars to infants (known to be such by the sender) inviting them to borrow money.

But these Acts were found insufficient, and public opinion was so stirred up by the cases of extortion that from time to time came into Court, that a Select Committee of the House of Commons was appointed in 1897 to consider the subject. The Committee reported that the system of money lending by professional money-lenders at high rates of interest was productive of crime, bankruptcy, unfair advantage over other creditors of the borrower, extortion from the borrower's family and friends, and other serious injuries to the community.[a]

In 1899 a Bill was introduced into the House of Lords by Lord James of Hereford, which, however, failed to become law, but being reintroduced this year, after important alterations in the House of Commons, became law in its present state as "The "Money-lenders Act, 1900."

(*a*) And the Chairman of the Committee when introducing the Bill to the House of Commons, said that he had entered the Committee with the belief that there should be free trade in money as in everything else, and that if a man chose to be a fool it was impossible to save him from his folly, but he found that instead of representing free trade in money, it frequently represented free trade in rascality and fraud. Parliamentary Debates, 21st June, 1900, p. 681.

This Act only applies to cases in which money is lent by a professional money-lender, but not to money lent by a private person which contract is not touched by the Act, and the following are its chief provisions :—

The Money-lenders Act, 1900.

By the first section the Court is enabled to relieve against any transaction which is harsh and unconscionable, and in which the interest is excessive, and may substitute in its place something reasonable and can set aside securities given for the money advanced.

By the second section money-lenders (that is people who make a business of money-lending, and to whom only the Act applies) must register their trade name, and their business addresses, and can be summarily convicted if they carry on business under any other name, or at any other address.

By the fourth section money-lenders who by any false statement endeavour to induce another to borrow money are guilty of a misdemeanour ; and by the fifth section, where an advertisement is sent to an infant, the money-lender has to prove he had reasonable ground for believing the infant to be of full age.

Thus as we have seen the law as regards money-lending has passed through four stages—

(*a*) At first it prohibited lending money at any interest ;

(*b*) Then it prohibited lending at interest exceeding a certain maximum;

(*c*) In the third stage it allowed a money-lender to lend at the best interest he could get;

(*d*) And now it relieves against unconscionable contracts, and only considers the rate of interest as a factor in determining whether the contract is conscionable or not.

A liberal construction of the Money-lenders Act, 1900, may be expected; but it remains to be seen whether or no it touches transactions that were never intended to be interfered with, and whether it adequately protects a borrower without rendering it unduly difficult for him to find a lender.

THE MONEY-LENDERS ACT, 1900.

63 & 64 Vict. cap. 51.

An Act to amend the Law with respect to Persons carrying on business as Money-lenders.

[8th August, 1900.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

Re-opening of transactions of Money-lender.

Where proceedings are taken in any court by a money-lender[1] for the recovery of any money lent after the commencement of this Act,[2] or the enforcement of any agreement or security made or taken after the commencement of this Act in respect of money lent either before or after the commencement of this Act,[3] and there is evidence which satisfies the court [4] that the interest charged in respect of the sum actually lent [5] is excessive,[6] or that

Section 1. Sub-sec.(1)

(1) p. 22. (2) p. 23. (3) p. 24. (4) p. 26. (5) p. 27. (6) p. 29.

the amounts charged for expenses, inquiries, fines, bonus, premium, renewals, or any other charges, are excessive, and that, in either case, the transaction is harsh and unconscionable,[7] or is otherwise such that a court of equity would give relief,[8] the court may re-open the transaction,[9] and take an account between the money-lender and the person sued, and may, notwithstanding any statement or settlement of account [10] or any agreement purporting to close previous dealings and create a new obligation, re-open any account already taken [11] between them, and relieve the person sued from payment of any sum in excess of the sum adjudged by the court to be fairly due in respect of such principal, interest and charges, [12] as the court, having regard to the risk and all the circumstances, may adjudge to be reasonable; and if any such excess has been paid, or allowed in account, by the debtor, may order the creditor to repay it; [13] and may set aside, either wholly or in part, or revise, or alter, any security given or agreement made in respect of money lent by the money-lender, and if the money-lender has parted with the security may order him to indemnify the borrower or other person sued. [14]

(7) p. 30. (8) p. 31. (9) p. 46. (10) p. 47. (11) p. 47.
(12) p. 48. (13) p. 50. (14) p. 50.

As nearly every word in the sub-section deserves consideration it may be convenient to deal in detail with the conditions on which transactions can be re-opened.

The title shows the general scope of the Act, which only deals with cases in which money is lent by a professional money-lender—that is by a person who makes a business of money-lending. A private person who lends money is not touched by the Act, which is a money-lend*er's* Act, and not a money-lend*ing* Act as is seen by section 7 (1).

Sub-section (1) of section 1 enables the Court to give relief when the money-lender is trying to enforce his agreement; sub-section (2) applies when the borrower or person liable applies for relief. Before the Court can give relief under either sub-section it must be proved :—

(i) that the lender is a money-lender.

Section 6 shows that the expression money-lender includes every person whose business is that of money-lending, or who holds himself out in any way as carrying on that business; certain persons and bodies as pawnbrokers, or registered friendly societies, or bodies corporate empowered by a special Act to lend money, or bankers, or anyone bonâ fide carrying on any business not having for its primary object the lending of money, in the course of which and for the purposes whereof he lends money, are expressly excluded from

the definition of money-lender. Of course, if the lender is registered as such under sec. 2 this will in the first instance require no further proof.

(ii.) That the interest or other charge is excessive.

The notes on excessive interest will be found on p. 29.

(iii.) that the transaction is harsh and unconscionable, or inequitable.

The notes on "transactions harsh and unconscionable" and "is otherwise such that a Court of Equity would give relief" will be found on pp. 30 and 31.

As we have seen in the introduction, opinions as to the conscionableness or unconscionableness of money-lending contracts have very much differed, it even being thought wrong at one time to lend money at any interest at all. The section thus throws a heavy responsibility on those administering the law; and on holding a transaction unconscionable, the further task is imposed on them of making a contract for the parties by determining what is a reasonable sum to pay under all the circumstances.

(1) Where proceedings are taken in any court by a money-lender.

By Order 57, rule 12 (R.S.C.), when goods and chattels have been seized in execution by a sheriff, and any claimant alleges that he is entitled, under a Bill of Sale or otherwise, to the goods and chattels by way of security for debt, the Court may order the sale of the whole or a part thereof, and direct

the application of the proceeds of the sale in such manner and upon such terms as may be just. It remains to be seen whether in an interpleader, where a money-lender is the claimant under a Bill of Sale, the Court can exercise its powers under this sub-section of re-opening the transaction, and only allow the money-lender to benefit under his Bill of Sale to a reasonable amount.

(2) For the recovery of any money lent after the commencement of this Act.

By section 7 sub-sec. (2) the 1st of November, 1900, is fixed as the commencement of the Act, and for the Court to give relief, the money must be lent, or the agreement in respect of the money lent, must be made on or after November 1st, 1900.

If, then, a money-lender agreed on October 31st, 1900, to lend the next day £100 at 60 per cent. per annum, payable quarterly, which he did, and on the first quarter's interest not being paid sued for it, since the agreement to pay interest would be made before the commencement of the Act, the Court possibly would not at this stage grant relief, but would wait to do so until the principal was sued for, since that was lent on November 1st, that is after the commencement of the Act.

The above words "recovery of money lent" probably apply to renewals, made after the commencement of the Act, of loans made before; but if not, it seems that the following words would apply.

(3) **The enforcement of any agreement or security made or taken after the commencement of this Act, in respect of money lent either before or after the commencement of this Act.**

By the previous words the Court can give relief when the money-lender sues for his principal, and by these words, when he seeks to enforce any other part of the agreement as by suing for his interest, and thus inferior courts have conferred on them jurisdiction under this sub-section to re-open the transaction and grant relief when they cannot do so under sub-sec. 2 on the application of the borrower, as will be seen by the note on "any court in which proceedings might be taken," to sub-section 2, p. 54.

The above words seem to include the case of a money-lender suing on an account stated between himself and a person to whom he owes money, being the balance due to him in respect of money lent after deducting the debt due from him, notwithstanding that as an account stated gives rise to a new cause of action, he is considered in law as suing on something quite distinct from his agreement to lend money. The above words also include the case of a money-lender proceeding against a surety, and sub-section 2, which is the correlative of this sub-section, expressly applies to a surety or other person liable.

A contract may be discharged by such an alteration in its terms as substitutes a new contract for the old one, and it is not necessary that the substi-

tuted contract should expressly discharge the former one, as its waiver may be implied by the introduction of fresh terms. But the new terms must be so inconsistent with the old as to show an intention to discharge the former contract. A mere postponement of performance, for the convenience of one of the parties, does not discharge the contract. This question has often arisen in contracts for the sale and delivery of goods, where the purchaser requests a postponement of delivery, and then refuses to accept the goods at all, alleging that the former contract has been discharged by the alteration of the time of performance, and that a new one has been created, which, however, is unenforceable, not being in writing. But the courts have always recognized "the distinction between a substitution "of one agreement for another, and a voluntary "forbearance to deliver at the request of the other "party,"(a) and has not allowed one party to a contract to discharge himself from his own obligations by inducing the other party to give him time for their performance; and though cases may arise in which there is considerable doubt as to whether the terms of a contract made before the commencement of the Act have been so substantially altered by the parties after the commencement of the Act as to discharge the old contract, and to compose a new one to which the Act will apply, yet it seems that where a money-lender who has lent money before the commencement of the Act, on being requested

(a) Hickman v. Haynes, L. R. 10 C. P. 598.

by the borrower to give him time to pay, does so after the commencement of the Act, this will not be such an agreement made after the Act, concerning money lent before, as to bring it within the Act.

(4) There is evidence which satisfies the court.

There must be evidence not only that the interest or other charge is excessive, but also that the transaction is unconscionable or inequitable.

It would seem then if the lender merely proved a document, which showed that the defendant agreed to pay very high interest for some money advanced, that this would be insufficient, and that the borrower must in all cases go on to show the circumstances under which the money was borrowed and lent.

In some cases it might be so inconvenient for the lender to lend the money, who might lose some valuable bargain by doing so, and at the same time the money might be of such great service to the borrower, that though the interest was very high, yet the contract might be perfectly conscionable. Indeed by the Act excessive interest and an unconscionable contract are not deemed synonymous.

The only limitation on the great power given to the Court is that there must be evidence which could satisfy it, and on this being given the judicial discretion given by the Act may be exercised in the cases named.

There may be, no doubt, conflicting decisions at first concerning the extent to which relief should go

and the circumstances under which it should be granted, but a liberal application of the Act may be expected, and authoritative judicial interpretation will do the rest.

The Act, it is seen, prudently leaves it to the judicial discretion of a judge, and not to the prejudices of a jury to say whether interest is excessive and the bargain harsh and unconscionable.

(5) Actually lent.

Sums are frequently charged for bonus, inquiries, or other expenses, so that the borrower really only obtains a smaller sum than that ostensibly advanced. And there is nothing in the Act to prevent this being done so long as the charges are reasonable, and if the borrower hands back to the money-lender some of the money advanced for expenses, the larger sum may possibly still be considered as the sum actually advanced, and the rate of interest ascertained on that footing.

Some guide as to the meaning of these words "actually lent" may be found in the cases on sect. 8 of the Bills of Sale Act, 1882, which makes void every bill in which the consideration for which it is given is not truly stated; and in Cochrane *v.* Dixon,[a] where at the time of the loan the borrower repaid the lender the legal expenses of the transaction, in the absence of evidence of a previous agreement to make any deduction, the whole amount of the loan was held properly stated as paid to the

(*a*) 3 T. L. R. 717.

borrower. For that is a true statement, even though, when the money is paid over, the borrower chooses voluntarily to pay part of it back again in respect of some debt due or accruing. (a)

But if the borrower never had the chance of taking the money, and so never exercised any option in the matter, the case is different; thus where a cheque was drawn for the consideration and indorsed by the borrower, but the lenders refused to pay it until a distress levied by the landlord had been paid out, and with the grantor's consent took away the cheque and executed bill of sale, and the same day paid out the landlord, and only handed over the balance to the borrower, it was held that the larger amount was not truly stated as "now paid"; (b) and where a bill of sale stated the consideration of it to be a sum of money "now paid" by the grantee to the grantor, and of the money paid by the grantee to the grantor a part was, in pursuance of a previous agreement between them, applied by the grantor to the retirement of a promissory note then current upon which the grantor and grantee were jointly liable, it was held that as the liability to the satisfaction of which the money was agreed to be applied, was a liability to a third person and not to the grantee, the consideration was truly stated, and Channell, J., said "The effect of the cases seem to be "this, that if by the agreement the money is to be "applied in paying someone else, it does not matter "whether the debt is due at the date of the bill of

(a) Richardson *v.* Harris, 22 Q. B. D. 268.
(b) Bishop *v.* Consolidated Credit Corporation, 86 L. T. J. 426.

" sale or not: but if it is to be retained by the " grantee, then, in order to justify the description " of the consideration as money now paid, the debt " must be already due." (a)

(6) Interest charged . . . is excessive.

Interest is the equivalent for two things—it is a charge for the use of the money lent and for the risk of losing it.

As the rate of interest, therefore, must depend on such variable circumstances as the state of the market and the nature of the security offered, no maximum can be safely laid down above which interest is to be deemed excessive; and it is obvious that what is a fair interest when the borrower is a substantial man, the security good, and the bank rate low, must differ so much from what is a fair interest when the borrower is a man who can give no security, and who has no character to lose, and the bank rate very high, that any fixed scale cannot be a reliable guide.

In the Act as originally introduced, instead of " the interest is excessive," the provision was " the interest exceeds the rate of interest mentioned in the schedule," which was, it is worth noticing, in respect of a loan not exceeding 40s., 25 per cent. per annum; exceeding 40s. but not exceeding £10, 20 per cent.; exceeding £10, 15 per cent.; but it being decided not to have any fixed scale, it was changed to its present form.

(a) In *re* Wiltshire, *ex parte* Eynon, (1900) 1 Q. B. 96.

(7) Harsh and unconscionable.

By a literal reading of the section, the word "otherwise" that follows would seem to qualify these words, so as to make them mean "is so harsh and unconscionable that a Court of Equity would give relief."[a] Though this construction cannot be said to make the section nugatory, yet it seems probable that it will not be adopted, and "otherwise" will be probably construed as meaning "on any ground."

It is more arguable that though the above reading is not to be adopted, yet that "otherwise" at least predicates that the Court, in construing the phrase "harsh and unconscionable," should look at the cases in which Courts of Equity have held a contract inequitable on account of its harshness; and that though the Court's power is not to be confined to the cases in which equity would give relief, yet the Court is to be guided by such cases, and is to act on similar principles.

The Court has discretion to say that though the interest is excessive, still the contract is not harsh and unconscionable. It is not a mere arbitrary deduction that because a high rate of interest is charged, the bargain is harsh and unconscionable.

In considering whether the transaction is harsh and unconscionable, the Court will probably take into consideration :—

(*a*) This seems to have been the view of those in the House of Commons who opposed the Bill, and through whom the clause "or is otherwise such that . . . " was inserted.

(i) the relations in which the parties stand to one another as possession of money on one side and great need of it on the other;

(ii) the conditions of repayment.

These have often been very harsh, as where £100 being advanced to a borrower repayable by six monthly instalments of £24 each, a promissory note is taken from the borrower for £144, payable by six monthly instalments of £24 each, with the condition that if default is made in payment of any one instalment, the balance owing at the time of default is to become immediately due and payable, by which means, on default being made, interest at a rate never contemplated is recoverable.

(iii) the rate of interest charged upon the loan;

(iv) the character of the security given or promised.

But it is not probable that the discretion of the Court will be guided by one or more fixed considerations, and regard will probably be had to the circumstances of each particular case.

(8) or is otherwise such that a court of equity would give relief.

Equity from the very earliest times has considered that it is not every bargain which distress may induce one man to offer, that another is at

liberty to accept,[a] and therefore has not always kept a man to his compact, but has sometimes relieved him from it.[b]

Though it is not possible to state precisely in what cases relief will be given, and in what it will not, yet the principle which has guided Courts of Equity is clear. Relief will be given where the parties do not meet on an equal footing, but under such circumstances as in the particular transaction give one party an unfair advantage over the other, and where that advantage is unconscientiously exercised.

Equity has held that certain circumstances raise the presumption that the parties have met on such an unequal footing, that one party has not been able to make a fair contract with the other; and where these circumstances occur, the burden is thrown on the other party of rebutting the presumption, by proving that he did not take advantage of the weaker party, that is to say by proving that as a matter of fact the terms were fair and reasonable, having regard to the nature and degree of the risk run.

And there are other circumstances, which though they do not of themselves raise this presumption, have greatly influenced the Courts in finding that one

(*a*) Bowes *v.* Heaps, 3 V. & B. 117; Wiseman *v.* Beake, 2 Vern 121.

(*b*) These contracts are sometimes termed "catching bargains" and sometimes "hard and unconscionable bargains" or "hard bargains."

party has obtained a harsh and unconscionable bargain from the other, which should not be enforced.

And the following are the chief of these circumstances:—

(i) *That the contract is with an expectant heir on the credit of his inheritance.*

This has been the chief class of bargains in which equity has given relief on account of the unfair advantage taken of one side by the other, the reason being that heirs, reversioners and expectants are notoriously often in poor circumstances, and especially when they are young and dissolute men, are ready to sacrifice the future to the present, and thus compose a class easily preyed upon, and therefore one which especially needs the protecting care of courts of equity. The principle on which equity originally intervened to set aside contracts made with expectant heirs was on grounds of public policy, and in the earlier cases much importance was also laid upon the policy of preserving family estates for those intended,[a] as it was often found that when the estates fell into possession instead of

(a) Barnardiston *v.* Lingwood, 2 Atk. 135; Gwynne *v.* Heaton, 1 Bro. C.C.I.; Davis *v.* Duke of Marlborough, 2 Swanston at p. 139 *n.* Sir G. Jessel in Beynon *v.* Cook, 10 Ch. App. at p. 392, said "the "doctrine being that you must not lend on extravagant terms to "reversioners or remaindermen with a view of getting paid out of "the reversion or remainder." In Tynte *v.* Hodge, 11 L. T. 490, Wood, V.C., said, "Such transactions being discouraged as tending "to lead the heir to gratify his caprices and destroy the family "estate." And Lord Hardwicke in Chesterfield *v.* Janssen, 2 Ves., 125, said, "I have not mentioned the reasons drawn from the "discouragement of prodigality and preventing the ruin of families "—considerations which have often weighed with the Court."

being enjoyed by the heir or person intended they were at once divided amongst a set of total strangers.

Inequitable contracts.

"These," says Lord Hardwicke, when speaking of bargains made with heirs in Chesterfield *v.* Janssen[a] "have been generally mixed cases compounded of all "or several species of frauds, there being sometimes "proof of actual fraud, which is always decisive. "There is always fraud presumed or inferred from "the circumstances or conditions of the parties con- "tracting—weakness on one side, usury on the other, "or extortion, or advantage taken of that weakness. "There has always been an appearance of fraud from "the nature of the bargain, even if there is no proof "of any circumvention, but merely from the intrinsic "unconscionableness of the bargain."

Indeed a special protection was given to expectant heirs by the doctrine that on a transaction being impugned by an expectant heir, mere inadequacy of price was a sufficient ground by itself for his obtaining relief, and that the onus lay on the other party to show he had given a fair price for what he had purchased.[b]

In Shelly *v.* Nash[c] Sir John Leach said: "At "law and equity also, generally speaking, a man who "has a power of disposition over his property, "whether he sells to relieve his necessities or to

(*a*) Supra.

(*b*) *See* cases collected in Davis *v.* Duke of Marlborough, 2 Swanston at p. 139 *n*; Earl of Aldborough *v.* Trye, 7 Cl. and Fin. at p. 456; and Bromley *v.* Smith, 26 Beaven 644, where it was held that rule applied, even if the heir was of mature age and understood the transaction, and that the heir need not show he was in pecuniary distress. *See also* Fry *v.* Lane, 40 C. D., at p. 320.

(*c*) 3 Madd. 232, at p. 235.

" provide for the convenience of his family, cannot " avoid his contract upon the mere ground of in- " adequacy of price. A court of equity, however, " will relieve expectant heirs and reversioners from " disadvantageous bargains. In the earlier cases it " was held necessary to show that undue advantage " was actually taken of the situation of such persons. " But in more modern times it has been considered " not only that those who were dealing for their " expectancies but those who were dealing for their " vested remainders also were so exposed to imposi- " tion and hard terms, and so much in the power of " those with whom they contracted, that it was a fit " rule of policy to impose upon all who dealt with " expectant heirs and reversioners the onus of " proving they had paid a fair price, and otherwise " to undo their bargains and compel a re-conveyance " of the property purchased."

The Sales of Reversions Act, 31 Vict. c. 4, however, abolished this privilege of expectant heirs by enacting that no purchase, &c., made *bonâ fide* and without fraud or unfair dealing, of any reversionary interest should hereafter be opened or set aside merely on the ground of under value.

This has, however, in no way affected the doctrine as to dealings with expectant heirs. Thus anyone who deals with an expectant heir on the credit of his expectation has still to support the onus of showing that the bargain was fair and conscionable.[a]

(a) Rae v. Joyce, 29 Ir. R., 500; O'Rorke v. Bolingbroke, L. R., 2 App., Ca. 814.

The phrase "expectant heirs" is used not in its literal sense, but as including all reversioners and remaindermen, and those who have but a *spes successionis*, and to whom money has been lent merely on the credit of their expectations,[a] and the relief extends not only to sales but to charges by them on their reversions, and to post-obits given by them.[b]

Inequitable contracts.

As we have seen the principle on which equity originally intervened to set aside hard bargains with expectant heirs was for the protection of family property, and on grounds of public policy, but this principle being once established the court extended its aid to all cases of unfair bargains where the weaker party is not in a situation to enable him fairly to make a bargain for himself.

(ii.) *That the weaker party had no legal or independent advice.*

In cases where one party is charged with having obtained an undue advantage over the other, the presence or absence of legal advice is, naturally, very important; and the proof that the weaker party had an independent solicitor will go far to disprove that any unfair advantage has been taken of him; and in any case where there is reason to suspect fraud, the want of legal advice will be a material element in the decision of such a case.

(*a*) Beynon *v.* Cook, L. R., 10 Ch., App. 391 *n.*

(*b*) Tottenham *v.* Emmet, 12 L. T. N. S. 838; The Earl of Aylesford *v.* Morris, 8 Ch., App. 484, at p. 490.

(iii.) *That the dealings were between mortgagor and mortgagee.*

In Hickes *v.* Cooke, [a] though relief was not given on the ground of acquiescence for nearly fifty years, Lord Eldon (C) said that a Court of Equity looked with a great deal of jealousy upon fee-farm grants or leases, at a fixed rent, made of mortgaged premises by the mortgagor to the mortgagee; and the Courts look on with jealousy, and scrutinize narrowly any transaction in which the mortgagee purchases from the mortgagor the equity of redemption.[b]

(iv.) *That one party was as it were taken by surprise.*

In Evans *v.* Llewellin, 1 Cox Ca. Eq. 333, a deed was set aside, which was given by a person in humble circumstances, who did not know of his right to some property, and who on being told of his right to it, was at the same time offered for it by his informer a sum, which though large to a person in his condition of life, was an inadequate consideration.

(v.) *That one party was an uneducated or ignorant person and without proper advice.*

In Baker *v.* Monk, 4 De G. J. & S. 388, a sale that took place between a person in good circumstances and a poor woman wholly unassisted, unadvised, and unaided, was set aside.

(*a*) 4 Dow 16.

(*b*) Ford *v.* Olden, L. R., 3 Eq., 461; Barrett *v.* Hartley, L. R., 2 Eq., 789; and *see* per Walker, C., in Kevans *v.* Joyce, 1896, Ir. R., vol. i., 442.

Lord Justice Knight Bruce said: "The parties "were not on equal terms. The plaintiff was not "competent to advise herself and had not the "protection she ought to have had."

In Rees *v.* De Bernardy (1896), 2 C. D. 437, where the defendant, having ascertained that two old women were entitled to a large property, induced them to sign an agreement, whereby in consideration of his revealing to them the existence of their property and of their title to it (of both which circumstances they were unaware), they agreed to give him half of the net amount. The old women were advanced in years, illiterate, and of very humble rank in life, and had no solicitor acting for them, and accordingly the agreement was set aside on the ground that the parties were not on an equal footing. [a]

(vi.) *That deception has been practised by one side on the other.*

In Tyler *v.* Yates, [b] an elder brother accepted a bill for an amount which included a sum due on a prior bill from his younger brother, and further advances to the latter. Further sums were afterwards advanced by the money-lender on similar bills, part of the proceeds being received by the elder brother, part by the younger brother; and the elder brother gave charges for all the sums due on the bills upon a reversion to which he was entitled on the death of

Inequitable contracts.

(*a*) *See* also Clark *v.* Malpas, 4 De G. F. and J. 401; Fry *v.* Lane, 40 Ch. D. 312.

(*b*) 6 Ch., App. 665. *see* Helsham *v.* Barnett, 21 W. R. 309; Howley *v.* Cook, Ir. R., 8 Eq., 571.

his mother. The younger brother was under age when he accepted the first bill, and so was under no legal liability on it, but the elder brother was not told this, and did not know it. The elder brother was relieved from payment of more than was actually advanced to him or to his brother, with interest at 5 per cent., and the securities were held only liable for that amount.

And the fact that deception has been practised by one side on the other would especially influence the Court in family agreements where *uberrima fides* is required on all sides.[a]

(vii.) *That the dealings were with persons under pressure of necessity, without adequate protection.*

Lord Hardwicke, in the Earl of Chesterfield *v.* Janssen,[b] enumerating the cases in which equity relieved against what he termed fraud, said: "A "third kind of fraud is that which may be pre- "sumed from the circumstances and conditions of "the parties contracting, and this goes further "than the rule of law which is that it must be "proved, not presumed; but it is widely established "in this court to prevent taking surreptitious advan- "tage of the weakness or necessity of another, "which, knowingly to do, is equally against con- "science as to take advantage of his ignorance; "a person is equally unable to judge for himself in

(*a*) Tennent *v.* Tennents, L. R. 2 H. L. (Sc.) 6.

(*b*) 2 Ves. 125.

" one as in the other," and Lord Selborne, L.C., in The Earl of Aylesford *v.* Morris,[a] said, " It " that is the Act as to Sales of Reversions, 31 Vict. c. 4, " has in no degree whatever altered the *onus probandi* " in those cases, which according to the language of " Lord Hardwicke raise ' from the circumstances or " ' conditions of the parties contracting—weakness " ' on one side, usury on the other, or extortion, or " ' advantage taken of that weakness ' a presumption " of fraud. Fraud does not here mean deceit or " circumvention, it means an unconscientious use of " the powers arising out of those circumstances and " conditions, and when the relative position of the " parties is such as primâ facie to raise this presump- " tion, the transaction cannot stand unless the party " claiming the benefit of it is able to repel the " presumption by contrary evidence proving it to " have been in point of fact, fair, just and reason- " able. . . . It is sufficient for the application " of the principle, if the parties meet under such " circumstances as in the particular transaction to " give the stronger party dominion over the weaker." So Sir George Jessel, in Middleton *v.* Brown,[b] commenting upon the meaning of ' hard bargains ' said, " Again, what is the meaning of the term " ' hard bargain.' If it has any distinct meaning " at all, as distinguished from a mere term of " abuse, it means in equity an unconscientious " bargain—that is, a taking advantage of the position " of one of the parties to the contract, and when I

(*a*) 5 Ch., App. 484, at p. 490.
(*b*) 47 L. J. Ch. 411 at p. 413.

"say taking advantage. I mean of course, taking "an unfair advantage."

But though the Court purported to set aside transactions in which one party had taken advantage of the weakness or necessity of another, in practice few instances are found before 1789 where this was done, except in cases where the money was lent on the security of a reversion or on the credit of a person's expectations: and the reason of this probably was that the usury laws when in force were sufficient to meet such cases: but the repeal of the usury laws brought into operation to a greater extent than before the principle which prevents any oppressive bargain, or any advantage taken from a man under pressing necessity and want of money from prevailing against him.

In Nevill v. Snelling[1] a money-lender, who knew that the borrower could not repay, but relied upon obtaining payment by bringing pressure to bear upon the family and the friends of the borrower, advanced sums of money at a high rate of interest.

Denman, J., allowed the notes to stand only for the sums actually advanced with interest at five per cent., and in the course of his judgment said: "I "can find no case which decides that the inter- "ference of the Court is limited to cases in which "the dealings have been with expectant heirs, "reversioners, or to cases in which the lending "has been one in relation to an expectancy.

[1] 15 Q. B. D. 679.

" If the transactions are such as to show that the " money-lender has been unconscientiously trading " upon the weaknesses of the borrower, commencing " operations with him during his minority, charging " him usurious interest and endeavouring to entangle " him more and more in indebtedness, not as a fair " matter of business, but looking to the chances of " extorting money from others interested in the " debtor, especially if there be any unfair dealing in " the course of the transactions, the Court will give " relief.

" The real question in every case seems to be the " same as that which arose in the case of expectant " heirs before the special doctrine in their favour " was established, that is to say, whether the dealings " have been fair and whether undue advantage has " been taken by the money-lender of the weakness " or necessities of the person raising the money.

" Sometimes extreme old age has been taken " advantage of and the transaction set aside. " Sometimes great distress. Sometimes infancy has " been imposed upon, and transactions, though " ratified at full age, have been set aside because of " the original vice with which they were tainted. " In every case the Court has to look at all the " circumstances. If there is nothing more than mere " inadequacy of price, or exorbitance of interest " charged, the transaction will not be interfered " with. But if the whole history of the transaction " presents so many features of unconscientiousness, " exorbitance and unfair dealing on the one side and

"weakness on the other, the Court will exercise its "equitable jurisdiction, at all events so far as to "restrain the profits of the money-lender within "fair and reasonable bounds."

In James *v.* Kerr, [a] where the plaintiff, who was a young man in want of money and a defendant in a probate action, agreed to repay what the defendant at his discretion should advance to relieve his necessities and to carry through the action with interest at five per cent. per annum, and in addition to pay a bonus of £225 out of the estate, it was held that the plaintiff was in a position analogous to that of an expectant heir, and that an unfair advantage had been taken of him, and therefore he was relieved of paying the £225 bonus. Inequitable contracts.

Where a transaction is set aside, it is usually on the terms of repayment of the amount actually advanced with interest at five per cent., although only four per cent. was allowed in Fry *v.* Lane. [b]

In Rae *v.* Joyce the Vice-Chancellor allowed 7 per cent., but this on appeal was reduced to 5 per cent., and Fitz Gibbon, L. J., said: [c]

"The Vice-Chancellor's palliation of the conse- "quences of his decree in awarding 7 per cent. "appears to me to be inconsistent with principle. "The bargain for 60 per cent. must be set aside.

(*a*) L. R., 40 Ch., D. 449. *See also* Kevans *v.* Joyce, 1896, Ir. R., vol. i. 442; Miller *v.* Cook, L. R. 10 Eq. 641; Wood *v.* Abbey, 3 Madd. 417; Beynon *v.* Cook, 10 Ch. App. 389; Croft *v.* Graham, 2 De G. J. & S. 155.

(*b*) Supra.

(*c*) 29 Ir. R. 500, at p. 527.

"By a long continued and hitherto uninterrupted "practice the Court gives 5 per cent., not as the "interest which might have been charged upon a "valid bargain under the particular circumstances "of the case, but as a sort of court rate for such "cases. We cannot consider what might have been "a fair bargain in this case. . . . . The Court "never yet has entered into speculations as to the "terms which the lender might have made without "rendering the bargain void; and we are not called "on to favour a man who has made a bargain which "we set aside as unconscionable."

And this definite rule of only allowing interest at 5 per cent. marks the difference of relief under the Act, and under the power inherent in Courts of Equity. When relief is given under the latter, the transaction is altogether set aside, and the Court does not attempt to ascertain what might have been a reasonable contract under the particular circumstances, but as the weaker party has had the advantage of the other's money allows interest for it at a fixed Court rate. But under the Act the Court does not set aside the contract but rectifies it, and awards as interest what it thinks reasonable having regard to the risk and all the circumstances of the particular case.

When a transaction is set aside on the ground of it being inequitable the practice as to costs seems to be unsettled.[a]

In Nesbitt *v.* Berridge[b] the usual course in

(*a*) *Per* Kay, J., in Fry *v.* Lane. (*b*) 1 N. R. 345.

the absence of misconduct was said to be to give no costs to either party, but Monroe, J., in Kevans *v.* Joyce, said: [a]

"The rule is not uniform, though where there is "nothing special, the costs usually follow the event, "as in Beynon *v.* Cook and Nevill *v.* Snelling, "especially where the plaintiff has always been "ready and willing, and has by his statement of "claim offered, to pay the defendant's advances "with 5 per cent. interest. But in Bromley *v.* "Smith [b] relief was given to the plaintiff, but no "costs, and in The Earl of Aylesford *v.* Morris relief "was given to the plaintiff without costs, though "the defendant before action had been offered his "advances with 15 per cent. In Fry *v.* Lane Mr. "Justice Kay refused to give costs to a successful "plaintiff merely because moral fraud had been "charged and not proved. In Rae *v.* Joyce the "Vice-Chancellor of Ireland refused costs to the "plaintiff, while he decided in her favour, because "he did not believe a considerable part of her "evidence at the trial."

And in that case, as the plaintiff had made charges amounting to moral fraud, which were not sustained, and as the plaintiff was paying no costs, these being paid by a syndicate of creditors, Monroe, J., left each party to pay his own costs of the action.

But a transaction, though impeachable may be rendered valid by confirmation as in the leading case

(*a*) 1896, Ir. R., vol. i., at p 472. (*b*) 26 Beav. 644.

of The Earl of Chesterfield *v* Janssen. But confirmation to render valid an impeachable transaction must be made with full knowledge of all the facts, and it must be after those circumstances, which occasioned his inability to make a fair contract, have been removed, and it will be of no avail whilst the plaintiff continues in the same situation as when he entered into the contract, [a] for in such cases it is presumed, that the same distress, which pressed him to enter into the contract, prevented him from coming to set it aside.[b]

(9) The Court may re-open the transaction.

As we have seen[c] the old rule of the Court on giving relief in an inequitable transaction was to set aside the contract, and the Court would not make a fresh contract in its place. But under the Act the Court is to rectify the contract and to substitute in its place such a contract as it adjudges to be reasonable considering the risk and all the circumstances of the particular case.

It is entirely in the discretion of the Court to exercise its powers or not. Although the defendant may not have applied for relief in his pleadings (where there are pleadings), yet it may be that the Court's power is not limited and that it may of its own accord call attention to the fact that the dealing is harsh and unconscionable, and re-open the trans-

(*a*) Gowland *v.* De Faria, 17 Ves., jun. 20.

(*b*) *See* further; Story's Equity Jurisprudence, vol. 1, p. 340; Bellot and Willis on Money-lending; and Kerr on Fraud and Mistake.

(*c*) p. 44.

action. But if the borrower has not applied for relief, or only applies in a very dilatory manner, unless explained, the conclusion probably would be that the contract is not harsh and unconscionable.

Where no notice has been given to the plaintiff beforehand that an application for relief will be made at the trial, the Court will of course see that the plaintiff is not prejudiced by an application for relief being sprung on him at the trial, and will if necessary adjourn the hearing of the case.

(10) Notwithstanding any statement of account.

When the money lent is not repaid to the day, and the borrower applies for a renewal, it is usual for the money-lender to get an admission of his account. It might be thought, should the money-lender sue on the account stated, that the Act did not apply, as the money-lender was not in law suing for the recovery of money lent, but on the account stated which is an independent cause of action, and therefore these words are inserted *ex abundanti cautelâ* to show that the Court can re-open any such account.

(11) May re-open any account already taken.

This must mean any account connected with the money lent or agreement sued upon. It could not mean if money was lent, say in November, 1900, and after divers accounts, this transaction was settled

and finished in November, 1902, and then in 1904, more money was lent which not being paid was sued for, that then the Court on finding the latter transaction unconscionable could re-open the former.

And it seems that this would not include an account taken before the Act.

For instance, if money borrowed before the commencement of the Act not being paid when due, an account was stated, also before the commencement of the Act; and this not being paid when due, another account was stated, this being after the commencement of the Act, and the money-lender sued on his second account. It is submitted that the second account only can be re-opened, but not the first as that would give the Act a retrospective force not intended, the Act being intended to apply only to money lent, or agreements made after the commencement of the Act. (a)

(12) Relieve the person sued from payment of any sum in excess of the sum adjudged by the Court to be fairly due in respect of such principal, interest and charges.

Having found that the interest or other charge is excessive, and that the transaction is harsh and unconscientious, there remains for the judge the very difficult task imposed on him by the above provisions of deciding what, considering the risk and all the circumstances, is fairly due to the money-lender for his principal, interest and charges.

To be able to fairly appreciate the risk the

(a) *See* p. 23.

money-lender incurred or thought he had to incur, the judge must put himself into the former's position at the time the contract was made, for it must be remembered that the judge has to decide not what in the light of subsequent events is a fair contract, but what after putting himself in the position of the lender at the time the contract was made, and considering the risk run, would then be considered fair and reasonable to charge for interest. (a)

As, however, the money-lender would clear a much smaller rate if this was the only charge allowed to him, it seems that some sum or a reasonable percentage should be allowed him for the necessary expenses of carrying on the business, as rent, clerks and other office expenses, such as looking after defaulting creditors, and also something to cover bad debts.

And, finally, there is to be settled what sum (if any) should be allowed for special charges and expenses in the particular transaction, such as for valuing the debtor's security, or for railway fares expended in visiting the debtor.

It may be that until the practice under the Act has become settled different judges will allow very different sums under the same circumstances, but much must necessarily depend on the circumstances of the case and the tribunal before which any transaction comes.

(a) This is the rule on which Courts of Equity have acted when giving relief against unconscionable bargains, Gowland v. De Faria 17 Ves. jun. 20; Boothby v. Boothby, 1 Mac. & G. 604.

(13) **If any such excess has been paid may order the creditor to repay it.**

It is in the judicial discretion to order or to refuse to order the money-lender to repay the excess; and when the money-lender claims to have any set-off or counterclaim, the judge will probably have this determined before he orders the money-lender to refund the excess; or, if the money-lender undertakes to bring an action within a certain time, will order the excess to be paid into Court to abide the result of the action.

(14) **And may set aside . . . . or revise . . . . any security given . . . . and if the money-lender has parted with the security may order him to indemnify the borrower or other party sued.**

The Act does not make void the security, which is therefore good in the hands of a *bonâ fide* holder for value, but only enables the Court to set it aside or alter it when it is in the possession of the money-lender. The borrower or person injured can therefore only look to the money-lender for relief, and cannot recover the security from a *bonâ fide* holder for value.

The above words were probably inserted in the Act to prevent any doubt arising as to the Court's power to vary or set aside any security the borrower might have given. For it does not follow, because a person cannot recover a debt due to him, that therefore any security he may have taken for it is void;

for a right to recover money is quite distinct from the right to keep something until the money is paid: and there are several instances in which a mortgage debt may be irrecoverable, and in which, nevertheless, the mortgagor cannot redeem the mortgaged property without paying the amount secured by the mortgage deed. In *ex parte* Sheil, *in re* Lonergan (a) a loan was made to a trader, at a rate of interest varying with the profits of his business, and the amount of the loan and the interest was secured by a mortgage of the lease of the house where the business was carried on, and of the goodwill of the business; the trader became bankrupt, and although section 5 of the Partnership Law Amendment Act, 1865, enacts that "In the event of any trader being "adjudged a bankrupt . . . . . the lender of "any loan at a rate of interest varying with the profits "of the business shall not be entitled to recover any "portion of his principal, or of the profits or interest "payable in respect of such loan . . . . . until "the claims of the other creditors of the said trader "for valuable consideration in money or money's "worth have been satisfied," it was held that the lender had not lost the benefit of his security so as to be postponed in respect of it to the claims of the other creditors of the borrower.

The Money-lenders Bill as originally introduced into the House of Lords in 1899 voided any contract made by, or any security given to, a money-lender. The Bill was, however, changed to its present form,

(a) 4 Ch. D. 189.

as otherwise it would often have punished people in a way altogether out of proportion to their offence. For instance, securities to the value possibly of thousands of pounds would have been void, merely because of the non-registration of the lender, who might perhaps have omitted to register himself because he had honestly thought he did not come within the Act. Innocent people, also, would have been made to suffer if securities in the hands of *bonâ fide* holders for value without notice were void.

Section 1. Sub-sec. (2)

Any court in which proceedings might be taken for the recovery of money lent by a money-lender shall have and may, at the instance of a borrower [1] or surety or other person liable, exercise the like powers [2] as may be exercised under this section, where proceedings are taken for the recovery of money lent, and the Court shall have power, notwithstanding any provision or agreement to the contrary, to entertain any application under this Act by the borrower or surety, or other person liable, notwithstanding that the time for repayment of the loan, or any instalment thereof, may not have arrived. [3]

So far the Act has only dealt with the case of the Court giving relief when the money-lender is trying to enforce his agreement; but the borrower or person

(1) p. 53. (2) p. 54. (3) p. 55.

liable is not obliged to wait in suspense until that happens. He may at any time apply for relief, though nothing is due. And it is important to notice that the two sub-sections are correlative, except as to the time at which relief may be given, and the persons against whom it may be given. As the first sub-section deals with the case of a money-lender trying to enforce his agreement, relief can only be granted when something is due, and it seems only against the money-lender; but under this sub-section relief can be granted though nothing is due, and it seems not only against the money-lender but against any assignee who is not a *bonâ fide* holder for value, without notice.

(1) At the instance of a borrower.

Two ways naturally suggest themselves in which the borrower might apply to the High Court for relief.

The first is by bringing an action for an account [a] or for a declaration that the transaction is not binding on him, and to have the documents cancelled (a proceeding which at the present time has practically fallen into disuse), or for a declaration that the contract is harsh and unconscionable and ought to be reopened and to have the documents cancelled or revised, and an account taken under the provisions of the Act.

The second is by taking out an originating summons. It is not at present, however, the practice on

(a) *See* Bullen and Leake's "Precedents of Pleading," 5th Ed., p. 56.

an originating summons to determine any matter involving disputed facts [a] and therefore it is safer until the practice is more settled to proceed by bringing an action for an account under the Act.

(2) Any Court in which proceedings might be taken for the recovery of money lent by a money-lender shall have and may at the instance of a borrower . . exercise the like powers.

If the money-lender himself invokes the aid of an inferior Court, he cannot complain if that Court in order to ascertain what he is fairly entitled to re-opens the whole transaction, yet if the borrower was allowed to apply to any Court in which the money-lender could enforce any part of his agreement, as the payment of interest, the borrower could often, without the consent of the money-lender, confer on an inferior Court jurisdiction to settle sums far beyond its ordinary limits: and so it seems the borrower can only successfully apply for relief to any Court in which the money-lender could recover his principal, and only such a Court can grant relief on the borrower's application, though as we have seen under sub-section (1) when the money-lender is trying to enforce his agreement, any Court in which he take proceedings can grant relief. And further the Court cannot under sub-section (1) or sub-section (2) relieve the borrower, or person liable from payment of what is due under the contract, when the money-lender has assigned his

(a) Nutter *v.* Holland (1894), 3 Ch. 416; *Re* Powers, 30 Ch. D. 291.

rights under the contract to a *bonâ fide* holder for value without notice, since by sub-section (5) the rights of the latter are not to be affected by the Act; and in such a case the only remedy of the borrower is one against the money-lender personally.

(3) **Notwithstanding that the time for repayment of the loan or any instalment thereof may not have arrived.**

Hitherto it has not been the custom of the Courts to make declarations as to future rights until questions as to them arise; and so in order to enable the borrower at any time to determine his position under the contract, the Court is expressly given power to entertain any application for relief though at the time nothing is due under the contract. The Courts, however, will not look favourably upon a borrower who, after obtaining a loan on certain terms, immediately applies to the Court for relief from those terms.

On any application relating to the admission or amount of a proof by a money-lender in any bankruptcy proceedings, the court may exercise the like powers as may be exercised under this section when proceedings are taken for the recovery of money. Section 1. Sub-sec. 3

By the Bankruptcy Act of 1890, 53 and 54 Vict., c. 71, sec. 25, where a debt, which includes interest, has

been proved upon the debtor's estate, all interest exceeding 5 per cent. per annum is postponed until all the other debts have been paid in full, when the creditor is entitled to receive the rest of his interest out of the surplus, if any; and therefore the power given by this sub-section will only be of advantage where there is another debt which includes interest above 5 per cent. per annum, due to some one who is not a money-lender, or in the rare cases where, after paying all the other debts, a surplus remains for the bankrupt.

Section 1. Sub-sec. (4)

The foregoing provisions of this section shall apply to any transaction which, whatever its form may be, is substantially one of money-lending by a money-lender.

When the usury laws were in force it was sometimes attempted to disguise usurious contracts under the mask of a sale and a re-sale; instead of the lender lending money he would sell goods to the borrower at an excessive price, it being understood that the borrower would at once resell them; but whenever the Court came to the conclusion that it was but a method of lending money under the mask of trading it refused to enforce the transaction. (a)

And when lending at any interest at all was forbidden another device to evade the law was to lend money to be repaid at a certain date without interest; but there was a condition in the agreement,

(a) Barker *v.* Vansommer, 1 Bro. Ch. 149.

that if the money lent was not repaid on that date, there should be payable at fixed periods until it was paid a certain sum, which nominally was to recoup the sender for the trouble and expense of having to send for the money, but which in reality was interest on the money lent.

And now the Courts will narrowly scan any transaction which seems to be an evasion of this Act, and if it comes to the conclusion that in substance it is one of money-lending by a money-lender will give relief, however the transaction may be disguised.

Nothing in the foregoing provisions of this section shall affect the rights of any *bonâ fide* assignee or holder for value without notice. Section 1, Sub-sec. (5)

The money-lender may of course assign his rights under the contract, and this sub-section enacts that where he does so to a *bonâ fide* holder for value without notice, the rights of the latter are not to be affected by the Act, but are to be the same as if the Act had not been passed; and so, where the assignee is a *bonâ fide* holder for value without notice, the Court cannot, on the application of the borrower, reopen the transaction under sub-section 2, and the assignee when he sues the borrower can recover the whole amount payable under the agreement; and the borrower's only remedy is one against the money-lender personally.

But although the borrower, when sued by a *bonâ*

fide assignee for value without notice, cannot obtain relief by having the transaction re-opened, yet he can set up all the usual defences available against assignees. At common law, choses in action, with a few exceptions as negotiable instruments, could not be assigned to another; and when the assignee invoked the assistance of a court of equity, the court of equity, on giving effect to the assignment, acted on the maxim that he who seeks equity must do equity, and conferred no better title on the assignee than that of his immediate assignor, or, as it is sometimes expressed, the assignee took the chose in action subject to the equities attaching to it in the hands of the assignor (*a*); and by the Judicature Act of 1873, (*b*) which enables debts or other legal choses in action to be effectually assigned at law, expressly makes the assignment subject to all equities which would have been entitled to priority over the right of the assignee, if that Act had not passed. Thus, if a debt be assigned, and the debtor has the right to set off some payment or credit against the assignor, he will have a similar right against the assignee (*c*), and generally the assignee takes subject to the state of accounts between the assignor and the debtor. (*d*)

But this rule that "the assignee of a chose in "action takes subject to all rights of set-off and other "defences which were available against the assignor" is subject to the limitation that after notice of an

(*a*) Graham *v.* Johnson, L. R. 8 Eq. 36.
(*b*) 36 & 37 Vict., c. 66, sec. 25, subs. 6.
(*c*) Young *v.* Kitchen, L. R. 3 Ex. D. 127.
(*d*) Bergman *v.* Macmillan, 17 Ch. D. 423.

assignment of a chose in action, the debtor cannot, by payment or otherwise, do anything to take away or diminish the rights of the assignee as they stood at the time of the notice. (a) But as the debtor is entitled to have all accounts under his contract taken together once for all, whether there has been an assignment or not, he is not prevented from availing himself of any set-off which arises out of the same transaction as gave rise to the debt assigned, even after he has received notice of the assignment. (b)

Thus the debtor can raise against the assignee any set-off, which he had against the assignor at the time he received notice of the assignment, whether it arose out of the same contract or not; and can also raise any set-off or counterclaim arising after receipt of notice, if it arises out of, and is inseparably connected with the dealings and transactions, which also give rise to the subject of the assignment (c) but cannot raise against the assignee any set-off or counterclaim which arises, after receipt of notice, from an independent contract, although the latter was entered into previously to receipt of notice, unless from the nature of the transaction it appears that the original parties intended there should be a set-off. (d)

A chose in action may be successively assigned over any number of times, and each successive assignee

(a) Roxburgh *v.* Cox, 17 Ch. D. 526.

(b) Government of Newfoundland *v.* Newfoundland Railway Company, 13 App. Ca. 199.

(c) Government of Newfoundland *v.* Newfoundland Railway Company *supra*.

(d) Watson *v.* Mid-Wales Rly. Co., L. R, 2 C. P. 593.

takes the same title as the immediately preceding assignee, so that the ultimate assignee is bound by all the equities that have arisen whilst the subject of the assignment was being transmitted from one person to another.[a]

So far the case of the transfer of a debt only has been dealt with, but the money-lender will often have a security for his debt. Since, when a debt is secured by a mortgage, the debtor is entitled to an immediate re-transfer of the property mortgaged, on payment of the amount due on the mortgage, it is a principle of equity that the mortgagee must always be in a condition to return the property mortgaged in *statu quo ante*, and therefore is not allowed to sever his debt from his security; and if he does so he will not be allowed to proceed for the debt on any other security he may have. Where, therefore, a mortgagee having, besides the property mortgaged, promissory notes made by the mortgagor as collateral security for the debt, transferred the mortgage without assigning the collateral securities, it was held he was not entitled to sever the debt from the security, and an injunction was granted against his proceeding to recover on one of the notes pending an action instituted by the mortgagor to redeem and to settle the equities of the parties.[b]

As the debt is the principal, and the security but an accessory, and only incident to the debt, the transfer of the former is a transfer of the latter,

(*a*) Ord *v.* White, 3 Beav. 357.
(*b*) Walker *v.* Jones, L. R. 1 P. C. 50.

according to the maxim, *omne accessorium cedit principali*. Thus, if a debt secured by mortgage be assigned, the assignee will be entitled to the benefit of the mortgage, for the law affixes the right to the debt and the right to all securities for it in the same hands, and, therefore, as we have seen, a mortgagee cannot sever the securities from the debt. (*a*) But if the assignee is not a *bonâ fide* assignee for value without notice, either because he has notice (*b*) of the circumstance which make the contract harsh and unconscientious, or inequitable, or because he is not an assignee for value, it seems that not being protected by this sub-section he is in the same position as his assignor, and that the Court may re-open the transaction and give relief from it.

Nothing in this section shall be construed as derogating from the existing powers or jurisdiction of any court. Section 1. Sub-secs. (6) and (7).

In the application of this Act to Scotland this section shall be read as if the words "or is otherwise such that a court of equity would give relief" were omitted therefrom.

This is the only specific reference in the Act to Scotland. The distinction between law and equity is peculiar to English jurisprudence. In Scotland

(*a*) Walker *v.* Jones, *Supra*.

(*b*) Notice here probably means actual notice of such facts as would enable the Court to give relief (*see* Fox *v.* Wright 6 Madd. 121), or wilfully shutting ones eyes so that one may not know such facts.

law and equity flow through a common channel, and there can be no question of relief from the mandates of the one by means of an appeal to the leniency of the other. The exclusion of Scotland from this peculiarly English reference is therefore quite appropriate.

Registration of money-lenders, &c.

Section 2. Sub-sec. (1)

A money-lender as defined by this Act—

(*a*) shall register himself as a money-lender in accordance with regulations under this Act, [1] at an office provided for the purpose by the Commissioners of Inland Revenue, [2] under his own or usual trade name, and in no other name, [3] and with the address, or all the addresses if more than one, at which he carries on his business of money-lender; and

(*b*) shall carry on the money-lending business in his registered name, and in no other name and under no other description, and at his registered address or addresses, and at no other address; [4] and

(1) p. 66, (2) p. 68, (3) p. 69, (4) p. 69.

(*c*) shall not enter into any agreement in the course of his business as a money-lender with respect to the advance and repayment of money, or take any security for money in the course of his business as a money-lender, otherwise than in his registered name; and

(*d*) shall on reasonable request, and on tender of a reasonable sum for expenses, furnish the borrower with a copy of any document relating to the loan or any security therefor.

If a money-lender fails to register himself as required by this Act, or carries on business otherwise than in his registered name, or in more than one name, or elsewhere than at his registered address, or fails to comply with any other requirement of this section, he shall be liable on conviction under the Summary Jurisdiction Acts to a fine not exceeding one hundred pounds, and in the case of a second or subsequent conviction to imprisonment,[5] with or without hard labour, for a term not exceeding three months, or to a fine not exceeding one hundred pounds, or to both: Provided that if the offender be a body corporate that Section 2. Sub sec.(2)

(5) p. 70.

body corporate shall be liable on a second or subsequent conviction to a fine not exceeding five hundred pounds.

It has been the custom of many money-lenders to trade under so many aliases that borrowers have often not known who was the real lender until they have made some default in repayment, when the money-lender would speedily disclose his identity; and, indeed, the aliases and advertisements of money-lenders have often been so misleading, as to induce borrowers to think they were dealing with private persons and not with money-lenders. For instance, money-lenders would describe themselves as The Clerical and Medical Mutual Alliance Bank, or would advertise in some such way as "Why go to money-lenders, when a private person will advance money to any amount on mere note of hand . . . &c."

This section attempts to remedy such a state of affairs by requiring all money-lenders—

(*a*) to register themselves under their own or usual trade name with their places of business;

(*b*) to only carry on their money-lending business in their registered name or at their registered address or addresses;

(*c*) not to enter into any agreement with respect to the advance or repayment of money, nor

to take any security for money, otherwise than in their registered names.

And in order that the borrower may know exactly the nature of the bargain he has entered into, the money-lender is further required by the section on reasonable request, and on tender of a reasonable sum for expenses, to furnish the borrower with a copy of any document relating to the loan or any security therefor.

Should the money-lender fail to comply with any of these requirements, the section makes him liable to be summarily convicted, and to be fined a sum not exceeding £100; and on a subsequent conviction to a similar penalty, or to imprisonment for any term not exceeding three months (with or without hard labour) or to both.

It remains to be seen how far the framers of the Act have obtained their object, and whether money-lenders will be able to evade its provisions. One way, it seems, in which money-lenders will evade part of the Act is by turning their money-lending business into a company. The articles of association will be signed by seven clerks, and shares in the form of share-warrants to bearer [a] will be issued to the money-lender, who will also be manager or secretary to the company. The money-lender will thus carry on his money-lending business under the name of the company, and when the reputation of that company

(a) *See* The Companies Act, 1867, 30 & 31 Vict. c. 131, secs. 27 to 32.

becomes too well known, and other aliases are wanted, he has but to repeat the process, and call the new companies by the desired names, and as the shares are share-warrants to bearer, the public will be unable to discover that all the different companies are really composed of the same money-lender.

(1)—**A money-lender as defined by this Act shall register himself as a money-lender in accordance with regulations under this Act.**

The requirement of registration is not a thing unknown to our statute book. Many persons have to register themselves, such as pawnbrokers, and marine store dealers, and indirectly all persons in professions may be said to be registered.

By section 3 (1) the regulations as to registration are to be made by the Commissioners of Inland Revenue, subject to the approval of the Treasury; and by that section the Commissioners may make regulations respecting the registration of money-lenders, whether individuals, firms, societies or companies, the form of the register, and the particulars to be entered therein, and the fees to be paid on registration.

By the regulations that have accordingly been made [a] the whole of the month of November, 1900, is allowed for the first registration; and so, though the

(*a*) *See* Appendix p. 100.

Act commences on the First of November, 1900, money-lenders may carry on their business of money-lending until the end of November without registering themselves. But this seems only to save them from being summarily convicted and fined for non-registration under sub-section (2); and there seems to be no curtailment of the power of the Court to give relief under section 1, sub-sections (1) and (2) in all cases, where the money is lent, or the agreement in respect of the money lent, is made on or after November 1st, although the money-lender in accordance with this regulation has deferred registering himself until the end of November. By another regulation individuals, firms, societies or companies proposing to start in the business of money-lending for the first time after the commencement of the Act must register before doing so. It is not quite clear whether or not the above month of grace is given to money-lenders who start their business for the first time in November. It seems that under the previous regulation they also have the month of November as a month of grace in which to register themselves.

By other regulations on a change of any kind being made in a firm or unincorporated society or company, or in its place or places of business, a fresh registration must be made within one calendar month of such change, and so when a partner is added to, or a partner retires from, a money-lending firm, or when a new branch is opened there must be fresh registration within one month. Likewise when there is any change in the place or places of business of

any incorporate society, company or individual a fresh registration must be made within one month.

Registration may be effected either by post or by personal attendance at the prescribed office;[a] and the necessary stamped forms for registration may be purchased at the Chief Registration Offices, or at the office of any collector of Inland Revenue, or on prepayment of £1 may be ordered through any Money Order Office; but applicants must state whether the registration is (*a*) of an individual, (*b*) of a firm or unincorporated society or company, or (*c*) of an incorporated society or company, seeing that different forms are used for each class.

(2) At an office provided for the purpose by the Commissioners of Inland Revenue.

The offices for registration are:—

For England and Wales.—The office of the Comptroller of Stamps and Stores, Somerset House, London, W.C.

For Scotland.—The office of the Comptroller of Stamps and Taxes, Edinburgh.

For Ireland.—The office of the Comptroller of Stamps and Income Tax, Custom House, Dublin, And if the business is carried on in more than one part of the United Kingdom, a separate registration must be made for each such part.

(*a*) *See* the following note as to this.

(3) Under his own or usual trade name, and in no other name.

A money-lender may register himself either in his real name, or in his usual trade name, but not in both; and if he registers himself under more than one name he can be convicted and fined under sub-section (2) of this section; and as his business address or addresses must be registered, a money-lender is to a great extent identified and localised by the Act.

(4) Shall carry on the money-lending business in his registered name, and in no other name . . . . . and at his registered address, and at no other address.

The requirements of paragraphs (*b*) and (*c*) of the sub-section under discussion stringently regulate the way in which a money-lender's business may be carried on. Not only is the money-lender not to enter into any agreement as to the advance or repayment of money, and not to take any security otherwise than in his registered name, but a money-lender is required to carry on his business in his registered name, and at his registered address or addresses, and not elsewhere. It is not easy to say with any precision all that is meant by the words 'shall carry on the money-lending business at his 'registered address or addresses, and at no other 'address,' but it seems that the mere fact, that some or all of the negotiations for loans are made at or

even that the money is actually advanced at some place or places other than the money-lender's registered address, does not of itself prove that the money-lender is carrying on his business at an address other than his registered one.

(5) **He shall be liable on conviction under the Summary Jurisdiction Acts to a fine . . . . . and in the case of a second or subsequent conviction to imprisonment.**

From a sentence of fine only, on summary conviction, there is no appeal on a ground of fact; but there is an appeal on the ground that the conviction is erroneous in point of law, or is in excess of the jurisdiction of the Court, by a special case to the High Court, under 20 & 21 Vict., c. 43, as amended by section 33 of the Summary Jurisdiction Act, 1879, (a) and regulated by r. 18 of the Summary Jurisdiction Rules, 1886.

But from a sentence of imprisonment on summary conviction without the option of a fine, there is an appeal both on law and fact to General or Quarter Sessions under section 19 of the Summary Jurisdiction Act, 1879.

Section 2. Sub-sec. (3).

A prosecution under sub-section (1) (a) of this section shall not be instituted except with the consent in England of the Attorney-

(a) 42 & 43 Vict. c. 49.

General or Solicitor-General, and in Ireland of the Attorney-General or Solicitor-General for Ireland.

There is danger that although in some cases the lender clearly does not come within the terms or the spirit of the definition in the Act of a money-lender, yet criminal proceedings for not registering himself as such may be instituted against him from improper motives, as a kind of blackmail, or out of spite, to harass him by publishing the fact that he lends money; and so in order to prevent as much as possible this abuse of the power of prosecution, the consent of the law officers is required in England and Ireland before a person can be prosecuted for not registering himself as a money-lender. But a lender who has registered himself as a money-lender under the Act will, presumably, not object to the publication of that fact; and so the danger of the abuse of the power of prosecution is not so great in other cases under this section, and therefore the protection of this proviso is not extended to them.

Regulations as to Registration.

The Commissioners of Inland Revenue, subject to the approval of the Treasury, may make regulations respecting the registration of money-lenders, whether individuals, firms, societies, or companies, the form of

Section 3. Sub-secs. (1) and (2).

the register,[1] and the particulars to be entered therein, and the fees to be paid on registration and renewal of registration, not exceeding one pound for each registration or renewal, and respecting the inspection of the register and the fees payable therefor.[2]

The registration shall cease to have effect at the expiration of three years from the date of the registration,[3] but may be renewed from time to time, and if renewed shall have effect for three years from the date of the renewal.

(1) **May make regulations respecting . . . . . the form of the register.**

Regulations in accordance with this section have been made, and are set out in the Appendix.[a] From them it will be seen that the forms for registration differ according as the "money-lender" is (*a*) an individual, (*b*) a firm or unincorporated society or company, or (*c*) an incorporated society or company.

(2) **The fees to be paid on registration and renewal of registration . . . . . .**

(1) p. 72. (2) p. 72. (3) p. 73. (*a*) pp. 100 & 105.

and respecting the inspection of the register and the fees payable therefor.

The fee for registering is one pound in respect both of an original registration and of a renewal of a registration. If the business is carried on in more than one part of the United Kingdom, a separate registration must be made for each such part.

The fee for inspection, and for a certified copy (if required), is in all cases one shilling in respect of each return inspected. Upon the certified copy the stamp duty of one shilling will also be payable.

The returns rendered to the offices for registration, and also the copies thereof sent to each collector of Inland Revenue in the United Kingdom in respect of such money-lenders as carry on business in his collection, are open to public inspection on payment of the fee of one shilling, which fee entitles the applicant to be furnished with a copy of the registered return.

(3) **The registration shall cease to have effect at the expiration of three years from the date of the registration.**

By the regulations that have been made one calendar month's grace is allowed for the renewal of registration, which this sub-section requires to be made every three years from the date of the preceding registration.

Penalties for false statement and representations.

Section 4. If any money-lender, or any manager, agent, or clerk of a money-lender, or if any person being a director, manager, or other officer of any corporation carrying on the business of a money-lender, by any false, misleading, or deceptive statement, representation, or promise, or by any dishonest concealment of material facts, fraudulently induces or attempts to induce any person to borrow money or to agree to the terms on which money is or is to be borrowed, he shall be guilty of a misdemeanour, and shall be liable on indictment to imprisonment, with or without hard labour, for a term not exceeding two years, or to a fine not exceeding five hundred pounds, or to both.

Borrowers who have obtained loans by false representations about their reversionary interests or their property or position generally may be convicted of obtaining money by false pretences. But a money-lender who makes promises he never intends to fulfil, and uses deceptive words in advertisements and interviews to induce a person to give his security and to become liable to obligations, which result or may result in his goods being taken, seems not to

have put himself within the reach of the criminal law before this Act; accordingly the legislature has attempted to put money-lenders and borrowers more under the same measure of criminal liability.

The word "misdemeanour" has no meaning in Scots law, but by the Interpretation Act, 1889,(a) it is enacted that "In this Act and every Act passed "after the commencement of this Act, unless the "contrary intention appears, the expression 'mis-"'demeanour' shall, as respects Scotland, mean an "offence."

Some Acts, however, passed since 1889, expressly define the term "misdemeanour" as regards Scotland; for instance, section 102 of the Friendly Societies Act of 1896(b) expressly defines "misde-"meanour" to mean as respects Scots law "crime "and offence." But this section is taken from section 4 of the Friendly Societies Act of 1875, which may be the reason of its insertion in the later Act.

Amendment of 55 & 56 Vict. c. 4, s. 2, as to presumption of knowledge of infancy.

Where in any proceedings under section 2 of the Betting and Loans (Infants) Act, 1892, it is proved that the person to whom the document was sent was an infant, the person charged shall be deemed to have known that the person to whom the document was sent

Section 5.

(a) 52 & 53 Vict. c. 63.

(b) 59 & 60 Vict. c. 25, sec. 102

was an infant, unless he proves that he had reasonable ground for believing the infant to be of full age.

For some time it has been recognised that great mischief ensues from the practice of sending circulars to boys or young men under twenty-one, inviting them to gamble or borrow money; and accordingly by the Betting and Loans (Infants) Act of 1892, (a) the sending of circulars to a person whom the sender knows to be an infant, inviting him to bet or borrow money, was made a misdemeanour; and by section 3 of that Act the sender of any such circular to an infant at any university, college, school or other place of education is to be deemed to have known that such person was an infant, unless he proves he had reasonable ground for believing such person to be of full age. But in cases that do not come within section 3, the Act has been to a great extent inoperative, owing to the difficulty of proving that the sender of the circular knew that the person receiving it was a minor. It has, therefore, been considered reasonable that the sender of circulars inviting people to borrow money should be liable to the penalty the law imposes, if he sends them to a minor, unless he can prove that he had reasonable ground for believing the receiver to be of full age. By this section, therefore, the presumption of knowledge of infancy is extended to all cases in which circulars are sent to a minor inviting him to borrow money; and the practical result of this will

(a) 55 & 56 Vict. c. 4, ss. 1 & 2.

probably be to make money-lenders far more careful than they have been to whom they send circulars, if it does not interfere very considerably with that practice.

Definition of money-lender.

Section 6.

The expression "money-lender" in this Act shall include every person whose business is that of money-lending, or who advertises or announces himself or holds himself out in any way as carrying on that business;[1] but shall not include—

(*a*) any pawnbroker in respect of business carried on by him in accordance with the provisions of the Acts for the time being in force in relation to pawnbrokers;[2] or

(*b*) any registered society within the meaning of the Friendly Societies Act, 1896, or any society registered or having rules certified under sections 2 or 4 of that Act,[3] or under the Benefit Building Societies Act, 1836, or the Loan Societies Act,

(1) p. 80. (2) p. 82. (3) p. 83.

1840,[4] or under the Building Societies Acts, 1874 to 1894;[5] or

(*c*) any body corporate, incorporated or empowered by a special Act of Parliament to lend money in accordance with such special Act; or

(*d*) any person bonâ fide carrying on the business of banking or insurance or bonâ fide carrying on any business not having for its primary object the lending of money, in the course of which and for the purposes whereof he lends money;[6] or

(*e*) any body corporate for the time being exempted from registration under this Act by order of the Board of Trade made and published pursuant to regulations of the Board of Trade.[7]

The above definition of money-lender, which does not profess to be exhaustive, is mostly one of exclusion. The expression "money-lender" is defined to include every person whose business is that of money-lending (that is to say every professional money-lender), and also every person who holds himself out in any way as carrying on that business; and then certain persons or bodies, who do in fact lend money, chiefly in the

(4) p. 84. (5) p. 85. (6) p. 86. (7) p. 89.

way of commerce and financial dealing, but do not come within the class colloquially known as money-lenders are specifically excluded.

As the Act does not attempt to define a money-lender the uncertainty consequent on the general description of the persons to be included in that expression may be a fruitful source of litigation until the meaning of the term "money-lender" has been judicially settled.

Primarily the question in every case will be one of fact, for if the person sought to be affected does not come within any of the exceptions of the section, it will have to be determined whether he is a money-lender in the ordinary and general signification of the word, or is, by the words of the statute, included in that expression. And it must be constantly remembered, when considering this section, that the word "includes" is used so that a person who does *not* carry on the business of money-lending may be a money-lender; and therefore the distinction between the words "includes" and "means" should be carefully noted, and for this purpose the following judicial opinions will be useful:—

"The words 'shall include' are not identical with "or put for 'shall mean.' The definition does not "purport to be complete or exhaustive. By no means "does it exclude any interpretation which the section "of the Act (the Coinage Offences Act, 1861) would "otherwise have; it merely provides that certain

"specified cases shall be included." Per Lord Coleridge, C.J., in R. *v.* Harman, 4 Q. B. D. 284 at p. 288.

"The interpretation clauses referred to during "the argument provide that the word 'street' shall "extend to and include any road. The intention of "the clause is that in construing the Act the word, "in addition to its ordinary meaning, shall bear the "meanings mentioned in the interpretation section. "The words 'shall include' mean shall have the "following meanings in addition to its popular mean-"ing." Per Brett, M. R., in The Corporation of Portsmouth *v.* Smith, 13 Q. B. D. at p. 195.

The class expressly included in the expression "money-lender" is thus defined:—

(1) **Every person whose business is that of money-lending, or who advertises or announces himself or holds himself out in any way as carrying on that business.**

The principle of inclusion in the class thus expressly named is clear, the test in any case being: "Does the particular person carry on, or does he "hold himself out as carrying on the business of a "money-lender." And it is clear from section 3 that individuals, firms, unincorporated companies or societies, or incorporated societies may all be money-lenders within the Act. In every case it is a question of fact for the judge at the trial to determine, but in practice some difficulty may often be found in applying the test. In many cases there

will be little doubt that a person is included, and in many others that he is not, but some cases will come so near the line that it will be very difficult to say beforehand whether they are included or not.

If anyone, thinking he is not included, does not register himself under section 2, sub-section (1) (*a*), he runs the risk of subsequently being held to be a money-lender, and of being summarily convicted under section 2, sub-section (2); while if he does register himself, although the fact that he is on the register may not be of itself conclusive proof that he is a money-lender within the Act, it will be difficult for him to attempt to persuade any Court that as a matter of fact he is not a money-lender.

For those who are undecided as to whether they are money-lenders within the Act or not, it may be pointed out that if they do not register themselves they will be in no worse position civilly than if they do, since agreements made by, and securities taken by, an unregistered money-lender are not voided by the Act. And before criminal proceedings can be taken against them in England or Ireland, the consent of the Attorney-General or Solicitor-General for England or Ireland respectively must first be obtained; and if this is obtained and they are convicted, in cases in which there is a real doubt, only a nominal fine will probably be inflicted, and until this happens they have an opportunity of proving that they are not money-lenders, and so not within the Act; while if they register themselves, they finally

settle that they are money-lenders, and that therefore all the bargains they may make can be re-opened by the Court.

(2) **Any pawnbroker in respect of business carried on by him in accordance with the provisions of the Acts for the time being in force in relation to pawnbrokers.**

Pawns to a pawnbroker are regulated, as between the pawnbroker and the customer, and any one claiming under the latter [a] by the Pawnbrokers Act, 1872.[b] This Act fixes the terms of the contract where the amount of the loan is not over 40s. Where the loan is over 40s. a special contract may be made, varying the statutory terms as to the profit chargeable and the period of the loan; and when this is done it must be in the prescribed form, and signed by both parties. The profit that can be charged is ½d. per 2s. per calendar month where the loan is 40s. or under; when over 40s. and no special contract is made ½d. per 2s. 6d. per calendar month can be charged,[c] which is respectively at the rate of 25 or 20 per cent. per annum.

By section 17 a pledge for a loan not greater than 10s. becomes the pawnbroker's absolute property after 12 months and seven days. After a like in-

(*a*) Singer Manufacturing Company *v.* Clark, 5 Ex. D. 37.

(*b*) 35 and 36 Vict. c. 93.

(*c*) S. 15, Sched. 4.

terval a pledge for any loan over 10s. may be sold at an auction, held and advertised in the prescribed manner;[a] and by section 22 the surplus realized, after deducting the money due and costs, belongs to the holder of the ticket.

And a pawnbroker's business is generally regulated by the Act. By section 37 he must have a yearly licence for each shop; by section 13 he must have his name over the shop door, and must keep posted up in his shop a copy of the fixed terms of contract; and by section 13 must keep a pledge-book showing the particulars of every loan, and must give a pawn-ticket to every pawnor, showing the terms of the contract.

By section 10 the Act does not apply to loans over £10, and no one is to be considered a pawnbroker by reason only of his lending any sum or sums over £10. Accordingly no one who lends any sum or sums over £10 is excluded by this sub-section from the expression "money-lender."

(3) **Any registered society within the meaning of the Friendly Societies Act, 1896, or any society registered or having rules certified under sections two or four of that Act.**

The Friendly Societies Act, 1896[b] applies chiefly to benevolent societies, that is to say societies formed

(a) Ss. 18, 19, Sched. 5. (b) 59 & 60 Vict. c. 25.

for providing help to non-members, cattle insurance societies, working men's clubs, or what may be called friendly societies proper. The last are societies formed by voluntary subscriptions for such purposes as (i) the relief or maintenance of members in sickness or bodily or mental infirmity, or in old age. (ii) The insurance against fire to an amount not exceeding £15 of a member's implements of trade. (iii) The insurance of money to be paid on the birth of a member's child, or on a member's death. The benefits to the assured must, if annuities, not exceed £50 per annum, nor a gross sum of £200.[a]

(4) Any registered society under the Loan Societies Act, 1840.

A loan society is a society for establishing a fund for making loans to the industrial classes and taking repayments by instalments with interest. If the persons composing it desire to have the benefit of the Loan Society Act, 1840, [b] the rules for the management of the society must be certified, deposited and enrolled, including the scheme of lending and repayment and the rate of interest. [c]

By section 13 a loan society certified under the Act may not lend more than £15 to one person at the same time, nor have more than one loan to the same person outstanding; and securities taken for a loan are not transferable or negotiable.

(*a*) S. 41. (*b*) 3 & 4 Vict. c. 110.
(*c*) Ss. 3, 22, 23, sched. E.

(5) Any registered society under the Building Societies Acts, 1874 to 1894.

A building society formed in accordance with the Building Societies Acts is a society for the purpose of raising, by the subscriptions of the members, a stock or fund for the purpose of making advances to members out of the funds of the society upon security of real or leasehold estate by way of mortgage.(a)

Building societies are either terminating or permanent, and all, whether terminating or permanent, which are governed by the Building Societies Acts, 1874 to 1894, are incorporated.

A terminating society is one which is to terminate at a fixed date, or when a result specified in its rules is attained.

A permanent society is one which has no fixed date or specified result at which it is to terminate, and therefore may continue for an indefinite time.(b) In terminating societies, as soon as there are sufficient funds in hand from the fixed subscriptions which the members pay, advances are made to members in anticipation of what would be payable to them, on the termination of the society; and a member who receives an advance gives a mortgage to secure the continued payment of the subscriptions due to him from the society.

In a permanent society the members take shares of a certain fixed amount, on which payment has to

(a) Building Society Act, 1874, s. 13. (b) S. 5.

be made either in a lump sum or by instalments, on which interest is usually payable. Advances are made from time to time to members on mortgage of real or leasehold property, the amount advanced varying according to the number of shares the member has; and the money advanced is usually repayable by instalments, composed partly of principal and partly of interest.

(6) **Any person bonâ fide carrying on the business of banking or insurance or bonâ fide carrying on any business not having for its primary object the lending of money, in the course of which and for the purposes whereof he lends money.**

Persons carrying on any trade or profession are not colloquially spoken of as money-lenders, and are not necessarily considered such by the Act, although in the course of their trade or profession and for the purposes thereof they lend money. Thus brewers often advance money to publicans who purchase a public-house or take a lease of one, tying them down to purchase their beer, &c., only from them. This they do in the course of and for the purposes of their business, and they are not therefore "money-lenders" within the Act. Similarly any person or company who in the ordinary course of commerce or of financial dealing lends money is not a money-lender within the Act. It may be expected that the courts will frequently have to decide whether particular persons come within this exception or not.

For if a person clearly cannot bring his case within (*a*) (*b*) (*c*) or (*e*) it will probably be contended first, that he is not a money-lender in the popular meaning of the word, or in the additional meaning given to it by this section; and secondly, that if he is, he comes within this exception, as he carries on a business which has not for its primary object the lending of money, and as he only lends money in the course of such business and for the purposes thereof.

By the Bills of Sale Act, 1878,[a] transfers of goods in the ordinary course of business of any trade, or calling are expressly excluded from the expression Bill of Sale. But it has been held that those words do not point to borrowing money on mortgage or special agreement, and that the fact that similar transfers are frequent among certain classes of merchants in the same line of business, do not show that such transfers are in the ordinary course of business.[b]

But to come within this exception it seems sufficient to show that the lender *bonâ fide* carries on a business which has not for its primary object the lending of money, and that he only lends money in the course of that business and for the purposes thereof; and that it is immaterial that others in the same line of business do not in the ordinary course of that business lend money for the same purpose as for which it has been lent in the particular case. For instance, if a poor man living in Canada claims

(*a*) 41 & 42 Vict. c. 31, sec. 4.

(*b*) Tennant *v.* Howatson, 13 App. Ca. 489; 58 L. T. 646; 57 L. J., P. C. 110.

some property in England, and is lent some money by a solicitor to pay for his passage over to England, etc., on the condition of employing the latter to bring the action to recover the property, it seems that the solicitor probably lends the money in the course of his business, and for the purposes thereof, and so comes within the exception, though it is an unusual thing for a solicitor to do.

In some cases it may be difficult to decide whether money lent is lent in the course of and for the purposes of a business, or whether a person is carrying on an independent business of money-lending, which he combines with some other business in order to make it appear that he only lends such money in the course of and for the purposes of that business. But it is difficult to see how money lent by some people as ordinary tradesmen can be lent in the course of and for the purposes of their business.

A large part of the business of solicitors consists in their obtaining loans for their clients, and often the solicitors themselves lend the money. In the latter case they obtain besides interest, fees for preparing the deeds, and the other usual legal charges, and often this is the reason why they lend the money. Accordingly it seems that solicitors, who lend money and obtain, besides interest, charges for preparing the deeds, lend money in the course of and for the purposes of their business, and so come within this exception. Clients and other people sometimes employ a solicitor not simply in his character of solicitor, but as a money-agent, to invest their money

at his discretion, allowing him procuration fees for any sum laid out on bond or mortgage, as well as a fee or charge for preparing the deeds. The solicitor then substantially carries on the business of a scrivener,[a] and it remains to be seen whether he will be held to be a money-lender within the Act.

It may be that factors or agents lending against goods, auctioneers on goods entrusted to them for sale, merchants against produce or on warrants, lend in the course of their respective business, and for the purposes thereof, and so come within this exception.

(7) **Any body corporate for the time being exempted from registration under this Act by order of the Board of Trade made and published pursuant to regulations of the Board of Trade.**

This power is presumably intended to be exercised in favour of finance companies whose operations, though consisting in lending money, are designed for the assistance and development of trade and are therefore quite different to the transactions at which the Act is meant to strike.

Regulations under this sub-section have been made by the Board of Trade, and will be found in the appendix [b] By them a form for application is given, and all applications for exemption must be made in that form. Certain documents as copies of the Memorandum and Articles of Association must be sent with an application.

(*a*) 1 Holt, 507; 3 Camp., 539.

(*b*) p. 108.

Under the regulations the Board of Trade may make an order of exemption subject to such conditions, and for such period as it thinks fit, and may at any time revoke such order; and all orders are to be published as there set out.

Short title and commencement.

Sect. 7. Sub-secs. (1) and (2).

This Act may be cited as the Money-lenders Act, 1900.

This Act shall come into operation on the first day of November one thousand nine hundred.

APPENDIX.

THE MONEY-LENDERS ACT, 1900.

63 & 64 Vict. cap. 51.

An Act to amend the Law with respect to Persons carrying on business as Money-lenders.

[8th August 1900.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Re-opening of transactions of money-lender.

1.—(1) Where proceedings are taken in any court by a money-lender for the recovery of any money lent after the commencement of this Act, or the enforcement of any agreement or security made or taken after the commencement of this Act, in respect of money lent either before or after the commencement of this Act, and there is evidence which satisfies the court that the interest charged in respect of the sum actually lent is excessive, or that the amounts charged for expenses, inquiries, fines, bonus, premium, renewals, or any other charges are excessive, and that, in either case, the transaction is harsh and unconscionable, or is otherwise such that a court of equity would give relief, the court may re-open the transaction, and take an account between the money-lender and the person sued, and may, notwithstanding any statement or settlement of account or any agreement purporting to close previous dealings and create a new obligation, re-open any account already taken between

them, and relieve the person sued from payment of any sum in excess of the sum adjudged by the court to be fairly due in respect of such principal, interest and charges, as the court, having regard to the risk and all the circumstances, may adjudge to be reasonable; and if any such excess has been paid, or allowed in account, by the debtor, may order the creditor to repay it; and may set aside, either wholly or in part, or revise, or alter, any security given or agreement made in respect of money lent by the money-lender, and if the money-lender has parted with the security may order him to indemnify the borrower or other person sued.

(2) Any court in which proceedings might be taken for the recovery of money lent by a money-lender shall have, and may, at the instance of a borrower or surety or other person liable, exercise the like powers as may be exercised under this section, where proceedings are taken for the recovery of money lent, and the Court shall have power, notwithstanding any provision or agreement to the contrary, to entertain any application under this Act by the borrower or surety, or other person liable, notwithstanding that the time for repayment of the loan, or any instalment thereof, may not have arrived.

(3) On any application relating to the admission or amount of a proof by a money-lender in any bankruptcy proceedings, the court may exercise the like powers as may be exercised under this section when proceedings are taken for the recovery of money.

(4) The foregoing provisions of this section shall apply to any transaction which, whatever its form may be, is substantially one of money-lending by a money-lender.

(5) Nothing in the foregoing provisions of this section shall affect the rights of any *bonâ fide* assignee or holder for value without notice.

(6) Nothing in this section shall be construed as derogating from the existing powers or jurisdiction of any court.

(7) In the application of this Act to Scotland this section shall be read as if the words "or is otherwise such that a Court of equity would give relief" were omitted therefrom.

Registration of money-lenders, &c.

2.—(1) A money-lender as defined by this Act—

(*a*) shall register himself as a money-lender in accordance with regulations under this Act, at an office provided for the purpose by the Commissioners of Inland Revenue, under his own or usual trade name, and in no other name, and with the address, or all the addresses if more than one, at which he carries on his business of money-lender; and

(*b*) shall carry on the money-lending business in his registered name, and in no other name, and under no other description, and at his registered address or addresses, and at no other address; and

(*c*) shall not enter into any agreement in the course of his business as a money-lender with respect to the advance and repayment of money, or take any security for money in the course of his business as a money-lender, otherwise than in his registered name; and

(*d*) shall on reasonable request, and on tender of a reasonable sum for expenses, furnish the borrower with a copy of any document relating to the loan or any security therefor.

(2) If a money-lender fails to register himself as required by this Act, or carries on business otherwise than in his registered name, or in more than one name, or elsewhere than at his registered address, or fails to comply with any other requirement of this section, he shall be liable on conviction under the Summary Jurisdiction Acts to a fine not exceeding one hundred pounds, and in the case of a second or subsequent conviction to imprisonment, with or without hard labour, for a term not exceeding three months, or to a fine not exceeding one hundred pounds, or to both : Provided that if the offender be a body corporate that body corporate shall be liable on a second or subsequent conviction to a fine not exceeding five hundred pounds.

(3) A prosecution under sub-section (1) (*a*) of this section shall not be instituted except with the consent in England of the Attorney-General or Solicitor-General, and in Ireland of the Attorney-General or Solicitor-General for Ireland.

Regulations as to Registration.

3.—(1) The Commissioners of Inland Revenue, subject to the approval of the Treasury, may make regulations respecting the registration of money-lenders, whether individuals, firms, societies, or companies, the form of the register, and the particulars to be entered therein, and the fees to be paid on registration and renewal of registration, not exceeding one pound for each registration or renewal, and respecting the inspection of the register and the fees payable therefor.

(2) The registration shall cease to have effect at the expiration of three years from the date of the registration, but may be renewed from time to time, and if renewed shall have effect for three years from the date of the renewal.

Penalties for false statement and representations.

4. If any money-lender, or any manager, agent, or clerk of a money-lender, or if any person being a director, manager, or other officer of any corporation carrying on the business of a money-lender, by any false, misleading, or deceptive statement, representation, or promise, or by any dishonest concealment of material facts, fraudulently induces or attempts to induce any person to borrow money or to agree to the terms on which money is or is to be borrowed, he shall be guilty of a misdemeanour, and shall be liable on indictment to imprisonment, with or without hard labour, for a term not exceeding two years, or to a fine not exceeding five hundred pounds, or to both.

Amendment of 55 & 56 Vict. c. 4 s. 2, as to presumption of knowledge of Infancy.

5. Where in any proceedings under section two of the Betting and Loans (Infants) Act, 1892, it is proved that the person to whom the document was sent was an infant, the person charged shall be deemed to have known that the person to whom the document was sent was an infant, unless he proves that he had reasonable ground for believing the infant to be of full age.

Definition of money-lender.

6. The expression "money-lender" in this Act shall include every person whose business is that of money-lending, or who advertises or announces himself, or holds himself out in any way as carrying on that business, but shall not include:—

(*a*) any pawnbroker in respect of business carried on by him in accordance with the provisions of the Acts for the time being in force in relation to pawnbrokers; or

59 & 60 Vict. c. 25.
6 & 7 Will. c. 32.
3 & 4 Vict. c. 110.

(*b*) any registered society within the meaning of the Friendly Societies Act, 1896, or any society registered or having rules certified under sections two or four of that Act, or under the Benefit Building Societies Act, 1836, or the Loan Societies Act, 1840, or under the Building Societies Acts, 1874 to 1894; or

(*c*) any body corporate, incorporated or empowered by a special Act of Parliament to lend money in accordance with such special Act; or

(*d*) any person *bonâ fide* carrying on the business of banking or insurance or *bonâ fide* carrying on any business not having for its primary object the lending of money, in the course of which and for the purposes whereof he lends money; or

(*e*) any body corporate for the time being exempted from registration under this Act by order of the Board of Trade made and published pursuant to regulations of the Board of Trade.

Short Title and Commencement.

7.—(1) This Act may be cited as the Money-lenders Act, 1900.

(2) This Act shall come into operation on the first day of November one thousand nine hundred.

NOTICE UNDER THE ACT

FOR THE

REGISTRATION OF MONEY-LENDERS.

(63 & 64 Vict. cap. 51, sec. 2.)

Every individual, firm, society or company whose business is that of money-lending is required by the above Act to register his or their names, addresses and descriptions.

The following, however, are not required to so register:—

(*a*) Any pawnbroker in respect of business carried on by him in accordance with the provisions of the Acts for the time being in force in relation to pawnbrokers; or

(*b*) Any registered society within the meaning of the Friendly Societies Act, 1896, or any society registered or having rules certified under sections two or four of that Act, or under the Benefit Building Societies Act, 1836, or the Loan Societies Act, 1840, or under the Building Societies Acts, 1874 to 1894; or

(*c*) Any body corporate, incorporated or empowered by a special Act of Parliament to lend money in accordance with such special Act; or

(*d*) Any person *bonâ fide* carrying on the business of banking or insurance or *bonâ fide* carrying on any business not having for its primary object the lending of money, in the course of which and for the purposes whereof he lends money; or

(*e*) Any body corporate for the time being exempted from registration under this Act by order of the Board of Trade made and published pursuant to regulations of the Board of Trade.

Failure to register in the prescribed form will, in the case of a first offence, entail a penalty not exceeding One Hundred Pounds, and, on a second offence a similar penalty, together with imprisonment for 3 months, with or without hard labour.

The following are the regulations made by the Commissioners of Inland Revenue, with the approval of the Treasury, under Section 3 of the Act, in respect of the registration :—

The whole of the month of November in the year one thousand nine hundred shall be allowed for the first registration.

At the expiration of three years from the date of the preceding registration, for which period registration is, under Section 3 (2) of the Act, effective, one calendar month shall be allowed for a renewal of the registration.

Individuals, firms, societies or companies proposing to start in the business of money-lending for the first time after the commencement of the Act must register before doing so.

A change of any kind in a firm or un-incorporated society or company, or in its place or places of business, as also a change in the place or places of

business of any incorporated society, company or individual, shall entail a fresh registration which must be made within one calendar month of such change.

The registration shall be effected either by post or by personal attendance at the prescribed Office.

The Offices for registration shall be as under—

For England and Wales—The Office of the Controller of Stamps and Stores, Somerset House, London, W.C.

For Scotland—The Office of the Controller of Stamps and Taxes, Edinburgh.

For Ireland—The Office of the Controller of Stamps and Income Tax, Custom House, Dublin.

Should the business be carried on in more than one part of the United Kingdom, a separate registration must be made for each such part.

The fee for registering in each of the above cases shall be One Pound in respect both of an original registration and of a renewal of a registration.

The fee for inspection and for a certified copy (if required) shall in all cases be One Shilling in respect of each Return inspected. Upon such certified copy the Stamp Duty of One Shilling will also be payable.

The Returns rendered to the above-mentioned Chief Offices, and also the copies thereof which will be sent to each Collector of Inland Revenue in the United Kingdom in respect of such Money-lenders as may carry on business in his Collection, will be open to public inspection, on payment of a fee of One Shilling, which fee will, if desired, entitle the applicant to be furnished with a copy of the registered Return.

The necessary stamped forms for registration and for searching may be purchased at the Chief Registration Offices or at the Office of any collector of Inland Revenue, or on prepayment of £1 or 1s., as the case may be, may be ordered through any Money Order Office; but applicants must state whether the registration is (*a*) of an individual, (*b*) of a firm or un-incorporated society or company, or (*c*) of an incorporated society or company—seeing that different forms will be used for each class.

September, 1900.

ORDER as to the amount of fees to be paid under "The Money-lenders Act, 1900," and as to the collection of the same by means of stamps.

WHEREAS by Sec. 3 (1) of The Money-lenders Act, 1900 (63 & 64 Vict., c. 51), it is provided, among other matters, that the Commissioners of Inland Revenue, subject to the approval of the Treasury, may make regulations respecting the fees to be paid on registration and renewal of registration, not exceeding £1 for each registration or renewal, and respecting the inspection of the register and the fees payable therefor:—

Now we, the undersigned, being two of the said Commissioners, with the approval of the Treasury, do hereby order and direct:—

(1) That the fee to be paid in respect of each registration or renewal thereof, whether such renewal shall arise in consequence of the expiration of the statutory period of three years after which registration shall cease to have effect, or in consequence of any change which may be made during that period in respect of name or names, address or addresses, of the person or persons registered or in any other particular, shall be the sum of £1.

(2) That the fee payable for the inspection of each separate return on the register shall be the sum of 1s. On the payment of this fee of 1s., together with the stamp duty of 1s. chargeable by law on a certified copy or extract from any public register, any person shall, on demand, be furnished with a certified copy of any registered return.

F. L. ROBINSON.
EDMOND H. WODEHOUSE.
Two of the Commissioners of Inland Revenue.

Dated the 11th day of September, 1900.

AND WHEREAS by Section 3 of "The Public Offices Fees Act, 1879," it is provided that the Treasury may, from time to time, make, and when made, revoke, alter or add to, regulations for all or any of the following purposes respecting fees in any public office, that is to say :—

(1) Regulating the manner in which the fees taken in money are to be taken, accounted for, and paid over.

(2) Determining the use of impressed or adhesive stamps and the mode of cancellation of adhesive stamps.

(3) Regulating the use of stamps and prescribing the application thereof to documents from time to time in use and requiring documents to be used for the purpose of such stamps.

Now we, the undersigned, being two of the Lords Commissioners of Her Majesty's Treasury, do hereby give notice and order and direct that the fees under "The Money-lenders Act, 1900," mentioned in the foregoing Order shall be collected by means of stamps, and that all such stamps shall be impressed stamps.

The said impressed stamps shall be of such design and character as the Commissioners of Inland Revenue may from time to time adopt for the purpose.

We do further give notice that this Order shall be binding on all officers or persons whom it may in any way affect.

H. T. Anstruther.
W. H. Fisher.
Two of the Lords Commissioners of
Her Majesty's Treasury.

Dated this 3rd day of October, 1900.

FORM No. 1.

FORM FOR USE OF A PERSON CARRYING ON BUSINESS ALONE.

RETURN PURSUANT TO THE MONEY-LENDERS ACT, 1900.
(63 & 64 Vict. c. 51, s. 2.)

£1 Stamp to be impressed in this space.

Own or usual trade-name in which the person carrying on the business of Money-lending is to be registered.

Actual Name, &c., of the person in question.

NAME.	RESIDENCE.	DESCRIPTION.

Names of Places where the business is carried on.

PLACE.	COUNTY.	PLACE.	COUNTY.

I, being the person above described, do hereby certify that the above is a true Return of the Particulars required by Section 2 of 63 and 64 Vict., cap. 51.

Signed _____

Dated the _____ day of _____ 190 .

FORM No. 2.

FORM FOR USE OF UN-INCORPORATED COMPANY, SOCIETY, OR FIRM.

RETURN PURSUANT TO THE MONEY-LENDERS ACT, 1900.
(63 & 64 Vict c. 51, s. 2.)

Usual trade-name in which the Un-incorporated Company, Society, or Firm carrying on the business of Money-lending is to be registered.

£1 Stamp to be impressed in this space.

Persons of whom the Un-incorporated Company, Society, or Firm consists.

NAME.	RESIDENCE.	DESCRIPTION.

Names of Places where the business is carried on.

PLACE.	COUNTY.	PLACE.	COUNTY.

I, being one of the Partners whose names are set forth above, do hereby certify that the above is a true Return of the Particulars required by Section 2 of 63 & 64 Vict. cap. 51.

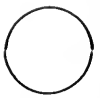
Signed _____

Dated the ____ day of _____ 1900.

FORM NO. 3.

FORM FOR USE OF INCORPORATED COMPANY OR SOCIETY.

RETURN PURSUANT TO THE MONEY-LENDERS ACT, 1900. (63 & 64 Vict. c. 51, s. 2).



Name in which the Incorporated Company or Society carrying on the business of Money-lending is to be registered.

Names of Places where the business is carried on.

PLACE.	COUNTY.	PLACE.	COUNTY.

I (being the Managing Director, or Secretary, as the case may be, of the Company or Society) do hereby certify that the above is a true Return of the Particulars required by Section 2 of 63 & 64 Vict., cap. 51.

Signed _____

Dated the _____ day of _____ 1900.

REGULATIONS

Made by the Board of Trade pursuant to section 6 (e) of the Money-lenders Act, 1900.

THE MONEY-LENDERS ACT, 1900.

WHEREAS by section 6 of the above-mentioned Act, it is provided that "the expression 'Money-lender' in this "Act shall include every person whose business is that of "money lending, or who advertises or announces himself, "or holds himself out in any way as carrying on that "business; but shall not include, *inter alia*—

> "(*e*) Any body corporate for the time being "exempted from registration under this Act by order "of the Board of Trade made and published pursuant "to regulations of the Board of Trade."

Now, therefore, the Board of Trade, in pursuance of the powers vested in them by the above-recited section, do hereby make the following regulations accordingly:—

Regulations.

1. The application for exemption under the above section shall be made on foolscap paper in the form A hereto annexed, and shall be signed by some responsible officer by and on behalf of the body corporate seeking for such exemption.

2. Such application shall be accompanied by—

(*a*) In the case of a body corporate registered under the Companies Acts, a copy of the Memorandum and Articles of Association, and, in other cases, a copy of the Charter, Deed of Settlement, or other document of incorporation, and the regulations governing the rights of members, such copies being certified by some responsible officer of the body corporate as true copies.

(*b*) A statutory declaration by a responsible officer of the body corporate setting out the nature of the business carried on by the body corporate.

(*c*) A copy of the last balance-sheet.

3. The Board of Trade may require and the body corporate (if so required) shall supply such further information by statutory declarations, production of documents or otherwise, as the Board may think proper, concerning the constitution, objects and financial position of the body corporate, and also concerning the manner in which the said body corporate has carried on its business.

4. The Board of Trade may, if they think fit, require notice of the application to be advertised in such papers as they may prescribe.

5. If in the opinion of the Board of Trade, the body corporate is a proper one for exemption under the Act, the Board will make an order exempting such body corporate from registration under the Act upon such conditions and for such period as the Board may think fit. Such order shall be in the annexed Form "B," or in such other form as the Board shall from time to time direct.

6. In the case of a body corporate registered under the Companies Acts, the order shall be signed in quadruplicate by the permanent secretary to the Board of Trade, or by one of the assistant secretaries to the Board, or by such person as may be authorized in that behalf by the President of the Board of Trade. In all other cases such order shall be signed in triplicate in manner aforesaid. One copy will be retained by the Board, and another copy will be forwarded to the body corporate.

7. The Board of Trade will also forward another of such copies to the office provided by the Commissioners of Inland Revenue, as specified in section 2 of the Act, and in the case of a body corporate registered under the Companies Acts, will forward the remaining copy to the Registrar of Joint Stock Companies.

8. The body corporate shall forthwith publish a copy of the said order in the London or Edinburgh or Dublin "Gazette," as the case may require, and in such other papers as the Board of Trade may direct.

9. Upon the expiration of the period limited by any order the body corporate may make a further application for renewal of the order of exemption, and the Board of Trade may from time to time make further orders exempting the body corporate from registration upon such conditions, and for such further period as the Board may think fit.

10. The Board of Trade may at any time by an order signed in manner provided by regulation numbered 6 hereof revoke any order of exemption, and shall cause notice of such revocation to be given to the body corporate, to the Commissioners of Inland Revenue, and,

in the case of bodies corporate registered under the Companies Acts, to the Registrar of Joint Stock Companies, and upon such revocation the body corporate shall cease to be exempted from registration under the Money-lenders Act, 1900.

The Board of Trade shall also cause a copy of the revoking order to be published in the London or Edinburgh or Dublin "Gazette" as the case may require.

COURTENAY BOYLE.

BOARD OF TRADE,
25th October, 1900.

A.

THE MONEY-LENDERS ACT, 1900.

APPLICATION FOR THE EXEMPTION OF A BODY CORPORATE FROM REGISTRATION UNDER THE ABOVE-MENTIONED ACT.

I, [1] of , in the County of , being duly authorized in that behalf by [2] hereby make application to the Board of Trade on behalf of the said [3] being a Body Corporate, incorporated by [4] for an Order exempting the said Body Corporate from registration as a Money-lender, under the provisions of the above-mentioned Act, upon the following grounds [5] :—

Dated this day of , 19 .

(Signed)

(*Here add official designation.*)

To the SECRETARY,
BOARD OF TRADE,
7, WHITEHALL GARDENS, LONDON, S.W.

(1) Here insert name and address and official designation of applicant.

(2) Here insert name and address of Body Corporate.

(3) Here insert name of Body Corporate.

(4) Here state whether incorporated by Charter, Deed of Settlement, or other document of incorporation, or under the Companies Acts.

(5) Here state grounds for exemption.

B.

THE MONEY-LENDERS ACT, 1900.

Order of Exemption.

In pursuance of the powers conferred upon the Board of Trade by section 6 (*e*) of the Money-lenders Act, 1900, the Board of Trade do hereby order that the [1] , whose address is [1] be exempted from registration as a Money-lender under the provisions of the above-mentioned Act for a period of three years from the date of the publication of this Order in the "Gazette," or until earlier revocation of this Order by the Board of Trade.

Dated this day of 19 .

Signed on behalf of the Board of Trade.

(1) Here insert full name and address of Body Corporate.

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